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Tuesday  
December 4, 1990

## Part III

## Department of the Interior

### National Park Service

### Abandoned Shipwreck Act; Final Guidelines; Notice



**DEPARTMENT OF THE INTERIOR****National Park Service****Abandoned Shipwreck Act Guidelines**

**AGENCY:** National Park Service,  
Department of the Interior.

**ACTION:** Final guidelines.

**SUMMARY:** These final advisory guidelines are to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Abandoned Shipwreck Act of 1987. The guidelines provide advice on establishing State and Federal agency shipwreck management programs; funding shipwreck programs and projects; surveying, identifying, documenting, and evaluating shipwrecks; providing for public and private sector recovery of shipwrecks; providing public access to shipwrecks; interpreting shipwreck sites; establishing volunteer programs; and creating and operating underwater parks or preserves. Issuance of these final guidelines fulfills the National Park Service's obligation under the Act to issue such guidelines.

**EFFECTIVE DATE:** These advisory guidelines take effect on December 4, 1990.

**ADDRESSES:** Requests for copies of the final "Abandoned Shipwreck Act Guidelines" should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Single copies of the final guidelines will be sent to persons, organizations, and State and Federal agencies that have previously requested copies or have provided comments on the development or subsequent revision of the guidelines. Those persons, organizations and agencies do not need to request copies of the final guidelines; copies will be distributed when available.

**FOR FURTHER INFORMATION CONTACT:** Michele C. Aubry (Departmental Consulting Archeologist's office) at 202-343-1879 or FTS 343-1879.

**SUPPLEMENTARY INFORMATION:****Background**

These final "Abandoned Shipwreck Act Guidelines" are being issued under the authority of the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106). Section 5 of the Act directs the National Park Service to issue guidelines to assist the States and the appropriate Federal agencies in developing legislation and regulations to

carry out their responsibilities under the Act.

The Act says that the guidelines "shall seek to: (1) Maximize the enhancement of cultural resources; (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States; (3) facilitate access and utilization by recreational interests; and (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage." The Act also requires that the guidelines be developed after consulting with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

**Preparation of the Guidelines**

The Abandoned Shipwreck Act was signed into law on April 28, 1988, by the President of the United States. By mid-July 1988, the National Park Service had developed and sent to each State a questionnaire that requested information on existing and pending State legislation and regulations about the management of shipwrecks in State waters. The questionnaire also asked for information on the State's activities related to the preservation of shipwrecks, the facilitation of recreational access to shipwrecks, the development and dissemination of interpretive information about shipwrecks, and the regulation of commercial fishing and salvage activities affecting shipwrecks. Forty-seven (or 84 percent) of the 56 States and territories polled provided responses to the questionnaire.

During September and October 1988, the National Park Service held public meetings in Washington, DC; San Francisco, CA; Seattle, WA; Austin, TX; Beaufort, NC; Colchester, VT; Lyndhurst, NJ; Madison, WI; Tampa, FL; New Orleans, LA; and Charleston, SC. The meetings were designed to provide the various public and private sector interests with an opportunity to provide suggestions to the National Park Service on the development of the guidelines.

Approximately 500 people attended the meetings and over 120 people voiced their opinions (or that of their organizations) in verbal statements that were recorded in 769 pages of transcripts. In addition, about 130 people sent letters to the National Park Service to express their opinions or that of the organization they represent.

All questionnaire responses, transcribed verbal statements, and written suggestions were fully considered by the National Park Service prior to developing the proposed "Abandoned Shipwreck Act Guidelines." In fact, many of the suggestions provided by the States, public meeting attendees and other members of the public contributed substantially to the preparation of the guidelines.

As required by the Act, the proposed guidelines were published in the *Federal Register* (54 FR 13642; April 4, 1989). However, knowing that sport divers, professional dive operators, salvors, fishermen, archeologists, and historic preservationists do not routinely have access to or read the *Federal Register*, the National Park Service sent press releases to the editors of numerous national and regional sport diving, maritime, archeological, and historic preservation newsletters, magazines and journals. In addition, over 3,500 copies of the proposed guidelines were distributed to the various interest groups and persons. Finally, in order to provide the public with a sufficient amount of time to obtain, read, digest, discuss, and prepare written comments on the proposed guidelines, the National Park Service elected to issue the proposed guidelines for a six month comment period instead of the more usual one to three months.

Written comments were received from 66 sources, including 30 from individuals, 16 from State agencies, 14 from organizations, and six from Federal agencies. The individuals who provided comments were primarily sport divers. The organizations that provided comments included sport diving associations, maritime societies and museums, avocational research organizations, and charter boat associations.

Comments were addressed to all sections of the proposed guidelines. However, a preponderance of comments were concerned with four specific issues: (1) The definitions for the terms "historic" and "non-historic" shipwrecks, (2) the assurance of recreational access by the public to shipwrecks, and (3) the withholding and the disclosure of locational information about shipwrecks, and (4) the regulation of commercial salvage and souvenir collecting activities at shipwrecks.

All comments were fully considered by the National Park Service when revising the guidelines for issuance as final guidelines. Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some



suggestions were not included because they either were beyond the scope of the guidelines or were inconsistent with the Abandoned Shipwreck Act. Many of the suggestions were incorporated and contributed positively toward improving and clarifying the guidelines.

### Major Changes in Response to Public Comments

#### Introduction

The introduction to the final "Abandoned Shipwreck Act Guidelines" remains basically the same as it appeared in the proposed guidelines.

Several commenters raised concerns that the National Park Service may make the guidelines a requirement for State historic preservation programs even though the guidelines are supposed to be advisory and, therefore, non-binding. To allay the commenters' concerns, language has been added to emphasize that the guidelines are advisory and non-binding, and are not being used to review State historic preservation programs for compliance with the National Historic Preservation Act and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.

#### Part I. Definitions

Part I contains the definitions for key terms used in the Act and in the final "Abandoned Shipwreck Act Guidelines." Three definitions have been revised, one has been deleted, and seven have been added.

The definition for the term "abandoned" shipwreck has been expanded to provide examples of vessels entitled to sovereign immunity. In addition, it notes that when the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter), title to the wrecked vessel is passed to the party who paid the owner. The definition also notes that under the Rivers and Harbors Act, owners of sunken vessels are required either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers. In the absence of such action by the owner, a shipwreck ordinarily is treated as abandoned after the expiration of 30 days from the sinking.

A number of commenters felt that the definition for the term "historic" shipwreck was too broad and that

embedded shipwrecks should not be treated as historic shipwrecks unless they have been evaluated and determined to be historic. The commenters recommended that "historic" shipwrecks be defined according to their historical qualities only, without regard to whether they are embedded. The definition has been revised accordingly.

In the proposed guidelines, the definition for the term "submerged lands" included a reference to the term "lands beneath navigable waters." Several commenters asked for clarification on what "lands beneath navigable waters" means. The Act defines "lands beneath navigable waters" by citing the definition for that term contained in section 2 of the Submerged Lands Act. The Submerged Lands Act provides a clear description of what "lands beneath navigable waters" means. Rather than merely referencing it in the guidelines, it has been added to the definition for the term "submerged lands." Examples also have been added.

The definition for the term "conservation" has been deleted; instead, the decision was made to rely on dictionary definitions.

Several commenters recommended that the term "non-historic" shipwreck be defined. Such a definition has been added.

Finally, definitions for six terms that are defined in the Act have been added to the guidelines. The terms are "embedded," "Indian lands," "Indian tribe," "National Register," "public lands," and "State." The definitions are the same as those contained in the Act.

However, in regard to the term "embedded," several commenters asked for clarification on what is meant by tools of excavation. Tools of excavation are tools used to remove or displace bottom sediments or coralline formations to gain access to embedded shipwrecks. Examples have been provided; they clearly indicate that diving equipment normally worn by recreational divers while exploring or viewing shipwreck sites are not considered to be tools of excavation.

#### Part II. Guidelines

Part II contains ten sets of guidelines for use by the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. Guidelines to assist the States in establishing shipwreck management programs are in subpart A. Guidelines to assist Federal agencies in establishing shipwreck management programs are in subpart B. Subpart C presents guidelines

for funding shipwreck programs and projects. Subpart D presents guidelines for surveying and identifying shipwrecks. Subpart E presents guidelines for documenting and evaluating shipwrecks. Guidelines to assist the States in providing for public and private sector recovery of shipwrecks are in subpart F. Subpart G presents guidelines for providing public access to shipwrecks. Subpart H presents guidelines for interpreting shipwreck sites. Subpart I presents guidelines for establishing volunteer programs. Guidelines to assist States in creating and operating underwater parks or preserves are in subpart J.

*Subpart A.* The guidelines in subpart A have been expanded and rearranged. Final guideline no. 3 has been revised to say the States should assign responsibility for State-owned shipwrecks to appropriate agencies. The guideline notes that while it would be desirable to assign responsibility to a single agency, it often is not practical to do so for several reasons. The guideline identifies several agencies having different expertise that should be assigned various responsibilities for shipwrecks (e.g., an agency experienced in historic preservation matters should have jurisdiction over historic shipwrecks—but not over non-historic shipwrecks—while an agency experienced in recreational resource management and historic site management should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves).

A new guideline no. 4 says the State should establish regulations, policies or procedures for the long-term management of State-owned shipwrecks. A new guideline no. 8 says the States should use the National Register of Historic Places criteria to determine the historical significance of shipwrecks. A new guideline no. 11 says the States should provide legal recourse for persons affected by the State's shipwreck management program, and identifies particular situations where an affected person should be provided with an opportunity to appeal decisions made by the State.

Proposed guideline no. 7 (on accepting donations) has been moved to subpart C, while proposed guideline no. 8 (on confirming the abandonment of shipwrecks) and proposed guideline no. 9 (on treating human remains in shipwrecks) have been moved to subpart D.

*Subpart B.* The guidelines in subpart B are a consolidation of two sets of guidelines that appeared in the proposed



guidelines; that is, the proposed guidelines for considering and mitigating effects of Federal activities on historic shipwrecks and the proposed guidelines for managing shipwrecks under Federal jurisdiction. The former set of proposed guidelines have been consolidated into a single new guideline no. 4, which says Federal agencies should consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act. The latter set of proposed guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 4 (on treating human remains in shipwrecks) and proposed guideline no. 5 (on confirming the abandonment of shipwrecks) have been moved to subpart D. A new guideline no. 5 says Federal agencies should conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act.

**Subpart C.** The guidelines in subpart C have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Final guidelines nos. 8 and 10 were moved to this subpart from other sections of the proposed guidelines. A new guideline no. 11 says commercial salvors should be required to post performance bonds so sufficient funds would be available to complete the salvage activity according to the terms of the contract if the salvor is unable to do so.

**Subpart D.** The guidelines in subpart D remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 7 (on preparing a shipwreck inventory) has been moved to subpart E. Final guidelines nos. 7 and 8 were moved to this subpart from other sections of the proposed guidelines.

A new guideline no. 9 says that Act requires that the public be given adequate notice of the location of any shipwreck to which U.S. title is asserted under the Act. The guideline sets forth what information, at a minimum, should be provided. The guideline notes that under certain circumstances, the exact location of a shipwreck may be withheld—this is not a violation of the Freedom of Information Act (5 U.S.C. 552) as some commenters suggested—but, in such cases, locational information of a more general nature should be given. The guideline notes that withholding locational information of a general nature would be inconsistent with the Act and the final

#### "Abandoned Shipwreck Act Guidelines."

One commenter suggested that the requirement in the Act to provide adequate public notice of the location of shipwrecks to which U.S. title is asserted applies only to those shipwrecks that are included in or determined eligible for inclusion in the National Register. That interpretation of Act is not correct; the requirement applies to all three categories of abandoned shipwrecks to which U.S. title is asserted under section 6 of the Act.

**Subpart E.** The guidelines in subpart E are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for evaluation and the proposed guidelines for documentation. In regard to the former set of guidelines, proposed guideline no. 2 (on using non-destructive methods) has been incorporated into final guideline no. 6 in subpart D. Final guideline no. 5 (on preparing a shipwreck inventory) was moved to this subpart from subpart D.

One commenter asked why the States and Federal agencies should nominate historically significant shipwrecks for listing in the National Register of Historic Places or for designation as National Historic Landmarks. The primary reason why the States and Federal agencies should do this is to fulfill their responsibilities under the National Historic Preservation Act to nominate historic properties under their ownership or control to the National Register. Listing a historic property in the National Register makes it eligible to receive Historic Preservation Fund grants for preservation purposes. Being listed (or being eligible for listing) also provides a measure of protection, under section 106 of the National Historic Preservation Act, from the potential adverse effects of proposed Federal projects and programs. Designation as a National Historic Landmark provides additional protection, under section 110(f) of the National Historic Preservation Act, from the potential adverse effects of proposed Federal undertakings. National Historic Landmarks threatened with demolition or impairment also are eligible to receive direct grants for preservation purposes from the Secretary of the Interior.

**Subpart F.** The guidelines in subpart F are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for treatment of non-historic shipwrecks and the proposed guidelines for archeological recovery of historic

shipwrecks. Those two sets of proposed guidelines received more public comments than any other set of proposed guidelines. The majority of commenters felt that the guidelines should apply to both historic and non-historic shipwrecks. Commenters also felt that the guidelines were inconsistent with the Act in that they did not provide for appropriate private sector recovery of State-owned historic shipwrecks. As a result, these guidelines have been revised substantially.

Final guideline no. 1 says the States should establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks. The guideline provides advice on the content of such policies, criteria and procedures.

Final guideline no. 2 says the States should authorize only those public and private sector recovery activities at State-owned shipwrecks that are in the public interest. The guideline provides advice on how to determine whether a proposed recovery activity is in the best interests of the public.

Final guideline no. 3 says the States should protect particular State-owned shipwrecks from commercial salvage, treasure hunting, and private collecting activities. The guideline sets forth criteria for the States to use to determine whether a particular shipwreck should be protected.

Final guideline no. 4 says the States should require that any recovery at State-owned historic shipwrecks be done in a professional manner. The guideline sets forth terms and conditions for the States to attach to any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks.

Final guideline no. 5 says the States should allow public and private sector recovery activities at State-owned non-historic shipwrecks without archeological conditions.

Final guideline no. 6 says the States should, as appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties. The guideline provides advice on steps the States should take before transferring title to any artifacts to private parties.

Final guideline no. 7 says the States should disseminate information on public and private sector recovery activities to the public and the scientific community, and identifies numerous methods for doing so.

Final guideline no. 8 says the States should discourage the recovery and display of intact shipwrecks because of



the prohibitive expense and the perpetual costs associated with doing so.

**Subpart G.** The guidelines in subpart G have been rearranged but remain basically the same as they appeared in the proposed guidelines. Final guideline no. 5 has been expanded to address regulating public access at shipwrecks entitled to sovereign immunity. The guideline says that, in the absence of specific instructions from the applicable sovereign nation regarding access to its shipwrecks, under customary international law, access by any U.S. national is prohibited. The guideline notes the conditions under which sovereigns generally grant permission.

**Subpart H.** The guidelines in subpart H have been consolidated and rearranged. In addition, two new guidelines have been added. New guideline no. 1 says interpretive efforts should present information on the vessel's history and the shipwreck's various values and uses. New guideline no. 6 says permittees, licensees and contractors should be required to disseminate information about recovery activities at historic shipwrecks.

**Subpart I.** The guidelines in subpart I are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for education and the proposed guidelines for volunteer programs. The guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines. However, proposed guideline no. 5 (on encouraging scientific and educational organizations to participate in shipwreck projects) has been moved to subpart C.

**Subpart J.** The guidelines in subpart J remain basically as they appeared in the proposed guidelines. However, at the suggestion of several commenters, proposed guideline no. 8 (on adding new dive sites to parks and preserves) has been deleted. The commenters felt that parks should be designated to protect existing historic shipwrecks and other submerged resources, not resources that are contrived. In addition, they felt that the State's limited monetary resources should be devoted to protecting existing historic shipwrecks rather than to stripping and sinking non-historic vessels, which is very costly. We agree; accordingly, the guideline has been deleted.

### Part III. Abandoned Shipwreck Act

A few commenters suggested that certain provisions of the Act be amended (such as retaining the law of finds and the law of salvage for abandoned shipwrecks claimed by the

U.S. Government under the Act, and asserting U.S. title to sunken aircraft, trains and automobiles). A few others suggested that the Act be repealed. It is beyond the authority of the National Park Service to enact amendments to or repeal any Federal statute. Such legislative actions are reserved for the U.S. Congress. Thus, the suggestions have not been adopted.

Other commenters suggested that the guidelines be changed in ways that would have been inconsistent with the Act (such as withholding from the public the locations of abandoned shipwrecks claimed by the U.S. Government under the Act, auditing State shipwreck management programs, and penalizing States that do not implement the Act's provisions). Such changes have not been incorporated into the guidelines.

It is important that the States, the appropriate Federal agencies, and other interested parties be fully cognizant of the purpose and content of the Act. Thus, the Act has been reprinted, in its entirety, in a new Part III to the final "Abandoned Shipwreck Act Guidelines."

### Part IV. Shipwrecks in the National Register of Historic Places

A new Part IV has been added to the final "Abandoned Shipwreck Act Guidelines." It provides information on shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places as of December 4, 1990. Where known, information is presented on the shipwreck's popular name and the vessel's name, if different; type and date of construction; wreck date and location; owner and manager, if different; and level of historical significance.

Publication of this information constitutes notice to the public that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks on the list and has transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public lands and Indian lands. The U.S. Government retains its title to shipwrecks in or on public lands while Indian tribes hold title to those in or on Indian lands.

### Authorship

Michele C. Aubry (archeologist and program analyst in the National Park Service) is the author of the final "Abandoned Shipwreck Act Guidelines." James P. Delgado (maritime historian and diver in the National Park Service) and Patricia C. Knoll (archeologist and diver on contract to

the National Park Service from the National Conference of State Historic Preservation Officers) also contributed material that was incorporated into the guidelines.

Dated: October 5, 1990.

**Herbert S. Cables, Jr.,**

*Acting Director, National Park Service.*

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#### Part III. Abandoned Shipwreck Act

#### Part IV. Shipwrecks in the National Register of Historic Places

Authority: 43 U.S.C. 2101-2106.

### Introduction

The Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106) was signed into law by the President of the United States on April 28, 1988. Under the Act, the U.S. Government asserted title to three categories of abandoned shipwrecks: abandoned shipwrecks embedded in a State's submerged lands; abandoned shipwrecks embedded in coralline formations protected by a State on its submerged lands; and abandoned shipwrecks located on a State's submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places.

Upon asserting title, the U.S. Government transferred its title to the majority of those shipwrecks to the respective States to manage. The United States retained its title to shipwrecks located in or on public lands while Indian tribes hold title to shipwrecks located in or on Indian lands.

The Act directs the National Park Service to prepare the guidelines being issued herewith to assist the States and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. In accordance with the Act, the guidelines are intended to maximize the enhancement of cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck



resources of the States and the United States; facilitate access and utilization by recreational interests; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

The "Abandoned Shipwreck Act Guidelines" and the philosophy upon which they are based are the result of three decades of shipwreck management experience within units of the national park system. That experience includes using an interdisciplinary team approach to survey, identify, evaluate, document, interpret, and protect hundreds of shipwrecks located in 59 national park units. It also includes experience conserving, storing, and maintaining artifact and archival collections relating to shipwrecks and other maritime resources. Many of these activities are carried out with the assistance of sport diver and non-diver volunteers and U.S. Department of the Navy dive teams. Some activities are carried out in cooperation with State and foreign governments. This breadth of experience in shipwreck management is reflected in the final "Abandoned Shipwreck Act Guidelines."

The "Guidelines" also reflect many of the comments and suggestions provided by the public, States, Federal agencies, and various interest groups during the course of their development. Sixty-six individuals and organizations provided written comments on the proposed "Abandoned Shipwreck Act Guidelines" (54 FR 13642, April 4, 1989). Over 120 people presented statements at 11 public meetings held during September and October 1988; about 130 people sent letters to express their opinions or that of the organizations or government agencies they represented. In addition, 47 States and territories provided information on their respective shipwreck management programs in effect in mid-1988. All of these comments and suggestions were carefully considered by the National Park Service and, to the extent permissible by law, incorporated into the final "Abandoned Shipwreck Act Guidelines."

The "Abandoned Shipwreck Act Guidelines" provide advice to the States and Federal agencies on how to effectively manage shipwrecks in waters under their ownership or control. The basic components of a shipwreck management program are to:

- (a) Locate and identify shipwrecks;
- (b) Determine which shipwrecks are abandoned and meet the criteria for assuming title under the Abandoned Shipwreck Act;
- (c) Determine which shipwrecks are historic;

(d) Identify recreational and other values that a shipwreck may possess and the shipwreck's current and potential uses;

(e) Provide for the long-term protection of historic shipwrecks;

(f) Protect the rights of owners of non-abandoned shipwrecks;

(g) Consult and maintain a cooperative relationship with the various shipwreck interest groups;

(h) Cooperate with State and Federal agencies and sovereign nations having an interest in shipwreck management;

(i) Provide sport divers with reasonable access to explore shipwrecks;

(j) Provide for public appreciation, understanding, and enjoyment of shipwrecks and maritime history;

(k) Conduct archaeological research on shipwrecks where research will yield information important to understanding the past;

(l) Provide for private sector participation in shipwreck research projects; and

(m) Provide for commercial salvage and other private sector recovery of shipwrecks when such activities are in the public interest.

The "Guidelines" provide advice on how to accomplish the basic components of shipwreck management. However, it is expected that the level of activity under each component (and the specific methods used to accomplish each component) will vary from State to State and from Federal agency to Federal agency. Primary factors influencing how activities under each component are undertaken would include, but not be limited to, the number and nature of shipwrecks under the State or Federal agency's ownership or control, the type and amount of current and potential future uses (like recreational, commercial, and scholarly uses), the type and amount of current and potential future impacts, the availability of monetary and staffing resources, and the applicability of other related statutes and regulations.

The "Abandoned Shipwreck Act Guidelines" are divided into four parts. Part I contains definitions of key terms used in the Act and the "Guidelines." Part II contains guidelines for the management of shipwrecks under State and Federal agency ownership or control. Part III contains the Abandoned Shipwreck Act as passed by the U.S. Congress and signed by the President. Part IV lists the shipwrecks that currently are listed in or are determined eligible for listing in the National Register of Historic Places.

States and Federal agencies should note that the "Abandoned Shipwreck

Act Guidelines" are advisory and, therefore, non-binding.<sup>1</sup> States and Federal agencies are encouraged to use the "Abandoned Shipwreck Act Guidelines" and other applicable standards and guidelines to establish, review, revise, and implement programs to manage shipwrecks under their ownership or control. States and Federal agencies are free to adopt the "Abandoned Shipwreck Act Guidelines" in their entirety, make changes to accommodate the diverse and sometimes unique needs of each State or Federal agency, reject parts as inapplicable, or use alternative approaches.

However, it is clear from the legislative history that the U.S. Congress intends for State shipwreck management programs to be consistent with the Abandoned Shipwreck Act and these "Guidelines" and for Federal shipwreck management programs to be consistent with the "Guidelines" to the extent consistent with other applicable Federal law (U.S. House of Representatives Report No. 100-514, Pt. 1, p. 3, and Pt. 2, p. 7).

#### Part I. Definitions

As used for purposes of these guidelines:

**Abandoned shipwreck** means any shipwreck to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person. By not taking any action after a wreck incident either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers, as is required under provisions in the Rivers and Harbors Act (33 U.S.C. 409), an owner shows intent to give up title. Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking.

(a) When the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter) the shipwreck is

<sup>1</sup> Since States may establish shipwreck management programs in offices other than the State's historic preservation office, the "Abandoned Shipwreck Act Guidelines" are not being incorporated into National Park Service Guideline No. 49, "National Register Programs Guideline," which is used to review State historic preservation programs for compliance with the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.



not considered to be abandoned. In such cases, title to the wrecked vessel is passed to the party who paid the owner.

(b) Although a sunken warship or other vessel entitled to sovereign immunity often appears to have been abandoned by the flag nation, regardless of its location, it remains the property of the nation to which it belonged at the time of sinking unless that nation has taken formal action to abandon it or to transfer title to another party. Any cargo aboard a vessel entitled to sovereign immunity also generally remains the property of the flag nation unless the cargo had earlier been unlawfully captured by that nation. In such a situation, title to the cargo remains in the nation from which it had been captured. Shipwrecks entitled to sovereign immunity are wrecks of warships and other vessels (such as privately owned vessels chartered or otherwise appropriated by a sovereign nation for military purposes) used only on government non-commercial service at the time of sinking. Examples of vessels entitled to sovereign immunity would include, but not be limited to, U.S. battleships and German U-boats from World War II, Confederate gunboats and Union ironclads from the Civil War, and British frigates and Colonial privateers from the Revolutionary War.

*Act* means the Abandoned Shipwreck Act (43 U.S.C. 2101-2106).

*Embedded* as defined in the Act means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. Tools of excavation would include, but not be limited to, hydraulic, pneumatic, or mechanical dredges; explosives; propeller wash deflectors; air lifts; blowtorches; induction equipment; chemicals; and mechanical tools used to remove or displace bottom sediments or coralline formations to gain access to shipwrecks.

*Historic shipwreck* means a shipwreck that is listed in or eligible for listing in the National Register of Historic Places.<sup>2</sup>

*Indian lands* as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470bb), meaning lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction

against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

*Indian tribe* as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470bb), meaning any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

*National Register* as defined in the Act means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a).

*Non-historic shipwreck* means a shipwreck that is not historic. When a question exists as to the historical significance of a shipwreck that is not listed in or determined eligible for the National Register of Historic Places, any person may make a request to the Secretary of the Interior for a written determination of the shipwreck's eligibility for inclusion in the National Register.<sup>3</sup>

*Public lands* as defined in the Act has the same meaning given the term in the Archaeological Resource Protection Act (16 U.S.C. 470bb), meaning:

(a) Lands that are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(b) All other lands the fee title to which is held by the United States, except lands on the outer continental shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

*Shipwreck* as defined in the Act means a vessel or wreck, its cargo, and other contents. The vessel or wreck may be intact or broken into pieces scattered on or embedded in the submerged lands or in coralline formations. A vessel or wreck includes, but is not limited to, its

hull, apparel, armaments, cargo, and other contents. Isolated artifacts and materials not in association with a wrecked vessel, whether intact or broken and scattered or embedded, do not fit the definition of a shipwreck.

*State* as defined in the Act means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

*Submerged lands* as defined in the Act means the lands that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); lands of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749); lands of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and lands of the Commonwealth of the Northern Mariana Islands, as described in section 301 of Public Law 94-241 (48 U.S.C. 1681).

(a) Under the Submerged Lands Act, "lands beneath navigable waters" means:

(1) Lands covered by nontidal waters that were navigable at the time the State either became a member of the Union or acquired sovereignty over the lands and waters;

(2) Lands permanently or periodically covered by tidal waters from the mean high tide line seaward to a line three geographical miles from the coastline (except for the Gulf of Mexico where it extends three marine leagues); and

(3) Filled in, made, or reclaimed lands that formerly were defined as lands beneath navigable waters.

(b) Notwithstanding the special rights of Texas, Florida, and Puerto Rico in regard to submerged lands seaward to a line three marine leagues from the coastline, under the Abandoned Shipwreck Act, the United States asserts sovereignty and title only to qualifying abandoned shipwrecks located within, but not beyond, three geographical miles from the coastline. The Committee on Merchant Marine and Fisheries has stated that Texas, Florida, and Puerto Rico are to exercise jurisdiction over abandoned shipwrecks beyond three geographical miles, but within three marine leagues, from the coastline in a manner consistent with international law principles (U.S. House of Representatives Report No. 100-514, Pt. 2, p. 5).

(c) Examples of submerged lands to which the Abandoned Shipwreck Act applies would include, but not be limited to, the bottomlands of navigable inland waters (such as rivers and lakes), tidal and offshore marine waters (such as

<sup>2</sup> Under the Abandoned Shipwreck Act, in order for the United States to assert title to any abandoned shipwreck, the shipwreck must be listed in or determined eligible by the Secretary of the Interior for listing in the National Register.

<sup>3</sup> Procedures for requesting determinations of eligibility are contained in regulations at 36 CFR part 63. Criteria for evaluation are found in regulations at 36 CFR part 60. National Register Bulletin No. 16, entitled "Guidelines for Completing National Register of Historic Places Forms," and National Register Bulletin No. 20, entitled "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places," provide advice on preparing National Register forms. Copies of the regulations and bulletins may be obtained by writing to the National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.



sounds, bays, and gulfs) seaward to a line three geographical miles from the coastline, and lands that formerly were navigable but have since been filled in, made or reclaimed (such as former river beds where courses have meandered or been filled in and former harbor areas that have been reclaimed to create non-submerged land). However, abandoned shipwrecks embedded in formerly submerged lands would, under common law, belong to the owner of the land.

## Part II. Guidelines

### A. Establishing State Shipwreck Management Programs

Almost every State, including landlocked ones with navigable rivers and lakes, contains shipwrecks in or on its submerged lands. Under the Act, the respective States now clearly hold title to and are responsible for managing a large number of previously abandoned shipwrecks located in state waters. The Act encourages the States to carry out their responsibilities under the Act in a manner that protects natural resources and habitat areas, guarantees recreational exploration of shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of the site's historical values and environmental integrity.

Many States have not yet established programs to carry out the responsibilities they acquired under the Act. The following guidelines are offered to assist those States in developing legislation and promulgating regulations that authorize the establishment of programs to manage State-owned shipwrecks. Many other States have established shipwreck management programs, some of which have been in operation since the 1970's. The following guidelines are offered to assist those States in reviewing and making any necessary amendments to their respective program's authorizing legislation or implementing regulations to assure that the responsibilities they acquired under the Act are fully accommodated.

**Guideline 1: Involve interest groups in shipwreck program development and management activities.** States should cooperate with, meet with, consult, seek comments from, request assistance from, and otherwise involve in an ongoing basis interested persons and groups in the establishment, review, revision, and implementation of legislation, regulations, policies, and procedures on the management of State-owned shipwrecks. Interested persons and groups would include, but not be limited to, sport divers, dive clubs, diving

instructors, dive boat operators, dive shops, commercial and recreational fishermen, marina operators, underwater archeologists, maritime historians, nautical conservators, maritime museums, historic preservationists, commercial salvors, and marine biologists. In addition, State and Federal agencies that have related or overlapping program responsibilities or interests should be involved. Such agencies would include, but not be limited to, those responsible for parks, preserves, sanctuaries, wetlands, refuges, marine life, coastal zone management, navigation, harbors, ports, recreation, tourism, museums, submerged lands, natural resources, cultural resources, historic preservation, fishing, and law enforcement.

**Guideline 2: Establish a shipwreck advisory board.** A state shipwreck advisory board should be established to promote and foster a direct and ongoing cooperative partnership among the various interest groups to manage State-owned shipwrecks. As appropriate to the needs of each State, the shipwreck advisory board should consist of private citizens who represent the major fields of interest and government officials who represent applicable State and Federal agencies. The major fields of interest would include, but not be limited to, sport diving and instruction; dive boat and marina operations; commercial and recreational fishing; commercial salvage of shipwrecks; underwater archeology, maritime history, historic preservation, curation, and nautical conservation; and marine biology. Duties of the State shipwreck advisory board should include, but not be limited to, the following:

(a) Making recommendations on enactment or amendment of State law that authorizes the establishment of programs to manage State-owned shipwrecks;

(b) Making recommendations on promulgation or amendment of State shipwreck management program regulations, policies, and procedures;

(c) Providing advice on the protection of natural resources and habitat areas near State-owned shipwrecks;

(d) Providing advice on what constitutes reasonable public access to State-owned shipwrecks and how the State should guarantee recreational exploration of its shipwrecks;

(e) Providing advice on what constitutes appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites;

(f) Reviewing and making recommendations on applications for proposed public and private sector recovery projects;

(g) Making recommendations on the creation of underwater parks or preserves that provide additional protection for State-owned shipwrecks; and

(h) Periodically reviewing, evaluating, and making recommendations for improvement of State shipwreck management program operations.

**Guideline 3: Assign responsibility for State-owned shipwrecks to appropriate agencies.** It would be desirable to assign responsibility for State-owned shipwrecks to a single agency. However, it often is not practical to do so since States have well established organizational structures where different State agencies have responsibilities for submerged lands and resources, the coastal zone, historic sites, parks, museums, and historic preservation matters. In addition, a single agency is unlikely to have available to it the full range of expertise that would be necessary to manage State-owned shipwrecks as multiple-use resources. Thus, it is recommended that:

(a) An agency experienced in the management of submerged lands and resources of the coastal zone should be responsible for the general management of an oversight over State-owned shipwrecks;

(b) An agency experienced in recreational resource management and historic site management (such as the State's park authority) should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves; and

(c) An agency experienced in historic preservation matters (such as the State's historic preservation office or underwater archeology office) should have jurisdiction over State-owned historic shipwrecks. That agency should have review and approval authority over all applications to disturb or remove artifacts or materials from historic shipwreck sites. In addition, that agency should be responsible for the development and implementation of a long-term plan to survey, identify, document, evaluate, study, interpret, protect, and preserve State-owned historic shipwrecks located in State waters.

**Guideline 4: Establish regulations, policies, or procedures for the long-term management of State-owned shipwrecks.** Consistent with the Act and the "Abandoned Shipwreck Act



Guidelines," regulations, policies, or procedures should be established that:

(a) Provide for the survey, identification, documentation, and evaluation of State-owned shipwrecks;

(b) Provide for the study, interpretation, protection, and preservation of State-owned historic shipwrecks;

(c) Provide additional protection to State-owned shipwrecks through the creation of underwater parks or preserves;

(d) Protect natural resources and habitat areas near State-owned shipwrecks;

(e) Guarantee sport divers recreational exploration of State-owned shipwrecks and provide reasonable public access to State-owned shipwrecks; and

(f) Allow for appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the sites.

**Guideline 5: Provide adequate staff, facilities, and equipment.** The agencies responsible for the management of State-owned shipwrecks should have (or have access to) adequate professional staff, office and laboratory facilities, vessels, and diving and underwater survey equipment to carry out assigned responsibilities. The number and occupations of staff and kinds of facilities, vessels, and equipment deemed to be adequate will vary according to the needs and goals of each State. To help determine appropriate staffing and funding levels, States may want to ask themselves the following questions:

(a) How many historic and non-historic shipwrecks are known to be present in State waters? How many are estimated to exist?

(b) How does the State conduct surveys or excavations to identify, evaluate, document, or recover shipwreck sites? Does the State use its own staff underwater archeologists, maritime historians, and marine surveyors, and use its own vessels, equipment, and facilities? Does the State award contracts or issue permits to private parties? Does the State coordinate, oversee, and work with volunteers? Does the State rely on sport divers, commercial salvors, commercial fishermen, marine surveyors, researchers, and other parties to report finds that then are examined by the State's professional staff? Does the State plan to change the way it conducts surveys or excavations?

(c) How does the State store, maintain, conserve, study, exhibit, and interpret artifacts and materials

recovered from shipwreck sites? Does the State use its own staff curators, nautical conservators, researchers, and exhibit specialists, and use its own equipment, conservation laboratory, and repository? Does the State award contracts or issue permits to private parties? Does the State loan or give items to sport diver collectors, commercial salvors, researchers, universities, local museums, or other parties? Does the State plan to change the way it carries out these activities?

(d) What kinds of interpretive, publication, and general public awareness programs does the State currently have? What kinds are planned?

(e) What is the amount of sport diving activity at shipwreck sites in State waters? Does the State currently facilitate recreational sport diving activities? Does the State intend to promote such activities?

(f) How many underwater parks or preserves currently exist? Are they operated by the State or by Federal agencies under agreements with the State? How many underwater parks or preserves are planned? Will the State manage them? What recreational and interpretive facilities currently are available? Does the State intend to develop any such facilities?

(g) What is the amount of scholarly research activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate scholarly research activities?

(h) What is the amount of commercial salvage activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate commercial salvage activities?

**Guideline 6: Cooperate and consult with State and Federal agencies.** For a State shipwreck management program to be effective, the agencies assigned management responsibility for State-owned shipwrecks should cooperate and consult, on a routine basis, with other State and Federal agencies that have related or overlapping responsibilities. State and Federal agencies that should be consulted, and the primary purposes for the contract, would include, but not be limited to, the:

(a) State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) about the:

(1) Identification, documentation, evaluation, protection, and preservation of State-owned historic shipwrecks;

(2) Nomination of historically significant shipwrecks to the National Register; and

(3) Award of Historic Preservation Fund grants for the study, interpretation, protection, and preservation of historic shipwrecks and properties;

(b) State's museum about the storage, maintenance, conservation, exhibition, interpretation, and study of artifacts and other materials recovered from State-owned shipwrecks;

(c) State's park authority about the:

(1) Creation and operation of State underwater parks or preserves;

(2) Facilitation of sport diver access to State-owned shipwreck sites; and

(3) Development of interpretive, recreational, and public awareness programs about the State's maritime heritage and shipwreck sites;

(d) State's submerged lands, natural resources, wetlands, and marine fisheries agencies about the protection of natural resources and habitat areas near shipwreck sites, particularly coralline formations protected by the State on its submerged lands;

(e) State's coastal zone management office about the:

(1) Incorporation of enforceable shipwreck management regulations, policies and procedures into the State's federally approved coastal zone management program;

(2) Inventory and designation of geographic areas of particular concern that contain historic shipwrecks, such areas being designated in accordance with the State's federally approved coastal zone management program and section 306 of the Coastal Zone Management Act (16 U.S.C. 1455);

(3) Coordination of any necessary Federal consistency determinations required in accordance with the State's federally approved coastal zone management program and section 307 of the Coastal Zone Management Act (16 U.S.C. 1456); and

(4) Award of Coastal Zone Management grants under sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455a, and 1456b) for State shipwreck management program development, implementation, and related activities;

(f) State's law enforcement agency attorney general's office about the protection of State-owned shipwrecks and the prosecution of persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program;

(g) U.S. Army Corps of Engineers and the U.S. Coast Guard about:

(1) Legal notice of abandonment of wrecked vessels that may have been provided pursuant to the Rivers and Harbors Act (33 U.S.C. 409);



(2) Evidence of prior dredging, filling, and channel modification that may have damaged or destroyed shipwrecks;

(3) Measures to ensure that survey, inventory, documentation, recovery, and protection activities at State-owned shipwrecks do not pose a hazard to navigation; and

(4) Prompt removal, by the responsible party or Federal agency, of modern sunken vessels that pose a hazard to navigation;

(h) Advisory Council on Historic Preservation and appropriate Federal agencies about coordination of any necessary compliance with sections 106 or 110(f) of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2) related to a Federal, federally assisted, or federally licensed undertaking in State waters that may have an effect on historic shipwrecks or on shipwrecks that are National Historic Landmarks;

(i) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, about the designation of national marine sanctuaries in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within national marine sanctuaries;

(j) National Park Service, U.S. Department of the Interior, about the creation of national park units in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within units of the national park system;

(k) Office of the Judge Advocate General, U.S. Department of the Navy, and the General Services Administration about the ownership and protection of sunken U.S. and Confederate warships and other vessels entitled to U.S. sovereignty located in or on a State's submerged lands; and

(l) Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, about the ownership and protection of sunken foreign flag warships and other foreign flag vessels entitled to sovereign immunity located in or on a State's submerged lands.

**Guideline 7: Establish a consultation procedure to comment on State and Federal activities that may adversely affect State-owned shipwrecks.** State and Federal agencies whose activities may disturb, alter, damage, or destroy State-owned shipwrecks should be required, prior to approving the activity, to take into account the effect of the proposed activity on any State-owned

shipwreck and to afford the State agencies assigned management responsibility for State-owned shipwrecks a reasonable opportunity to comment on the proposed activity.

(a) When the State's shipwreck management program has been incorporated into the State's historic preservation program, the consultations conducted under sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2) should be used to comment on proposed Federal activities that may affect State-owned historic shipwrecks.

(b) When the State's shipwreck management program has been incorporated into the State's federally approved coastal zone management program, the Federal consistency reviews conducted under section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) should be used to comment on proposed Federal activities that may affect State-owned shipwrecks located within the coastal zone.

(c) When State-owned shipwrecks that may be affected are historic, the comments of the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office) should be obtained.

**Guideline 8: Use the National Register of Historic Places criteria.** Section 6(a)(3) of the Act requires that any abandoned shipwreck located on—rather than embedded in—a State's submerged lands must be listed in or determined eligible for listing in the National Register of Historic Places in order for the United States to assert title to it. The Act does not require that any abandoned shipwreck embedded either in the seabed or in coralline formations protected by a State be so listed or determined eligible in order for the United States to assert title to it. Nevertheless, it is recommended that, in the management of State-owned shipwrecks, the historical significance of all shipwrecks be determined using the National Register's eligibility criteria, which appear in regulations at 36 CFR part 60.

**Guideline 9: Use applicable standards and guidelines.** Applicable standards and guidelines should be used in the operation of the State's shipwreck management program. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, which provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing for public and

private sector recovery of shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, establishing volunteer programs, and creating and operating underwater parks or preserves;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, survey, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Recording Historic Ships" (September 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(d) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

Copies of the above cited documents may be obtained by writing to the National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

**Guideline 10: Prosecute persons who willfully violate the State's shipwreck management program.** Persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program should be prosecuted in accordance with State laws and regulations governing State-owned property, and where the shipwreck in question is historic, historic property laws and regulations.

(a) Affected interest groups should be provided with information on the State's shipwreck management program; the importance of protecting State-owned shipwrecks; any restrictions, fines, and penalties for willfully violating the program; and an office to contact for further information. At a minimum, information should be distributed to local dive clubs and dive boat operators, posted at marinas and docking facilities, and posted on or near shipwreck sites.

(b) Criminal fines and civil penalties for persons convicted of willfully violating provisions of the State's management shipwreck program should be commensurate with the nature of the violation, increase with subsequent convictions, and include community service in the management of shipwrecks. Third and subsequent



convictions should include confiscation and forfeiture of all equipment and vessels used in the commission of the violation.

(c) Artifacts and other materials recovered illegally from State-owned shipwrecks after enactment of the State's shipwreck statute should be confiscated. When possible, artifacts and materials of historical significance should be conserved and maintained.

(d) Any fines or penalties collected should be used to repair or stabilize damaged shipwreck sites, restore the environment surrounding the sites, conserve and maintain confiscated historically significant artifacts and other materials, further the efforts of shipwreck research and protection, and enhance the public's appreciation of the State's maritime heritage.

*Guideline 11: Provide legal recourse for persons affected by the State's shipwreck management program.* Any affected person or party who believes a State's shipwreck management program is not consistent with the intent of the Act and the "Abandoned Shipwreck Act Guidelines" should be provided with legal recourse under State law. In particular, any affected person should be provided with an opportunity to appeal decisions by the State to:

(a) Withhold public notice of the locations of shipwrecks to which, under the Act, the State holds title;

(b) Deny a person's request for non-destructive recreational exploration of or public access to State-owned shipwrecks;

(c) Deny a person's request for the recovery of State-owned shipwrecks when the person believes the proposed recovery is consistent with the historical values and environmental integrity of the shipwreck and the site; and

(d) Assess a civil penalty against a person who is convicted of willfully violating the State's shipwreck management program.

Any affected person may appeal a State's evaluation of the historical significance of a shipwreck by requesting from the Secretary of the Interior a written determination of the shipwreck's eligibility for listing in the National Register of Historic Places.

#### *B. Establishing Federal Shipwreck Management Programs*

Federal agencies have been responsible for managing and protecting historic properties (including historic shipwrecks) located on public lands since passage of the Antiquities Act (16 U.S.C. 431-433) in 1906. This responsibility was reaffirmed in 1979 with enactment of the Archaeological Resources Protection Act (16 U.S.C.

470aa-mm) and expanded upon in 1980 when the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) was amended.

Abandoned shipwrecks located on public lands generally have been treated as Federal property and have been managed according to applicable Federal property, land management, and historic preservation statutes. The Abandoned Shipwreck Act (43 U.S.C. 2101-2106) reaffirms this assertion of U.S. title and management responsibility for abandoned shipwrecks located on public lands. However, the Antiquities Act, the Archaeological Resources Protection Act, and other historic preservation statutes establish more stringent requirements than does the Abandoned Shipwreck Act for managing and protecting federally-owned or controlled historic shipwrecks. Because of these differences, the Committee on Merchant Marine and Fisheries said that "Federal agencies \* \* \* should manage their historic shipwrecks consistent with the (Abandoned Shipwreck Act) guidelines to the extent consistent with other applicable federal law" (U.S. House of Representatives Report No. 100-514, Pt. 2, p. 7).

Under the National Historic Preservation Act, Federal agencies also are responsible for taking into account the effects of their programs and projects on historic properties. Some activities that are undertaken, funded, licensed, or permitted by Federal agencies have the potential to affect historic shipwrecks. Examples of such activities would include, but not be limited to, dredging in rivers and harbors, discharging material into a waterway, constructing bridges and harbor facilities, exploring for and developing mineral resources, removing shipwrecks and drift, commercially salvaging shipwrecks, making wildlife habitat improvements, and making shoreline or channel improvements. These kinds of activities are subject to the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2).

In addition, some activities that are directly undertaken, funded, licensed or permitted by Federal agencies have the potential to affect shipwrecks located in the coastal zone. When these activities occur in the coastal zone of a State with a federally approved coastal zone management program, they may be subject to section 307 to the Coastal Zone Management Act (16 U.S.C. 1456).

To fulfill these various statutory requirements, Federal agencies have established programs to survey, identify, document, evaluate, protect, and preserve historic properties that are under their ownership or control or that

may be affected by their programs and projects. The following guidelines are offered to assist Federal agencies in reviewing and making any necessary changes to these programs to ensure that shipwrecks under their ownership or control are properly managed and protected and to ensure that the effects of their projects and programs on historic shipwrecks are taken into account prior to project or program approval.

*Guideline 1: Manage historic shipwrecks in accordance with section 110 of the National Historic Preservation Act.* In accordance with section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2), when a Federal agency owns or controls submerged lands, the agency must:

(a) Assume responsibility for the preservation of historic shipwrecks sites located on federally-owned or controlled submerged lands;

(b) To the maximum extent feasible, use historic shipwreck sites under its ownership or control for agency purposes (such as studying and interpreting the sites for the public);

(c) In accordance with appropriate professional standards, take steps to preserve historic shipwreck sites under its ownership or control (such as stabilizing and preserving historic shipwrecks in place, or recording and recovering sites when preservation in place is not feasible);

(d) In cooperation with the State's historic preservation office, establish programs to locate, inventory, and nominate historic shipwrecks under its ownership or control for inclusion in the National Register of Historic Places. The State's underwater archeology office (or archeology office, in the absence of an underwater archeology office) also should be consulted about the survey, identification, documentation, and evaluation of historic shipwrecks;

(e) Exercise caution to ensure that historic shipwreck sites under its ownership or control are not inadvertently transferred, sold, destroyed, substantially altered, or allowed to deteriorate significantly;

(f) When a Federal or federally assisted undertaking will destroy or substantially alter an historic shipwreck site, ensure that appropriate records are made of the site and deposited in the Library of Congress or other institution designated by the Secretary of the Interior. The level of recordation should be agreed upon by the Federal agency, the State's historic preservation office, and the Advisory Council on Historic Preservation as a part of the consultation process under section 106



of the National Historic Preservation Act (16 U.S.C. 470f); and

(g) When a Federal undertaking will directly and adversely affect an historic shipwreck designated as a National Historic Landmark, to the maximum extent feasible, take steps to minimize harm to the landmark and afford the Advisory Council on Historic Preservation an opportunity to comment on the undertaking. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for Federal agencies to fulfill this requirement.

**Guideline 2: Issue archeological permits for the recovery of historic shipwrecks in accordance with the Archaeological Resources Protection Act.** Requests for the archeological recovery of historic shipwrecks located on public and Indian lands must be reviewed and approved or denied by Federal land managers in accordance with the permitting requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm), its implementing regulations (43 CFR part 7; 36 CFR part 296; 18 CFR part 1312; 32 CFR part 229), and any other agency specific statutes and regulations. Federal land managers generally issue permits for the excavation or removal of archeological resources (including historic shipwrecks) when the following conditions are met:

(a) The permit applicant is qualified to carry out the activity, meaning that the person has:

(1) A graduate degree in anthropology or archeology, or equivalent training and experience;

(2) Demonstrated the ability to plan, equip, staff, organize, and supervise the type and scope of the proposed activity;

(3) Demonstrated the ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(4) Completed at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity being proposed; and

(5) Completed at least 12 months of experience in research concerning archeological resources of the pertinent prehistoric or historic period, meaning that applicants proposing to study historic shipwrecks should have one year of experience in historic shipwreck research;

(b) The proposed activity is for the purpose of furthering archeological knowledge in the public interest;

(c) For an activity proposed on public lands, the artifacts and material remains that are recovered from the shipwreck site will remain the property of the United States, and the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(d) For an activity proposed on Indian lands, the Indian landowner and Indian tribe having jurisdiction have consented to the proposed activity and, unless the Indian owner retains custody of the artifacts and material remains, the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(e) The proposed activity is fully consistent with any management plan applicable to the submerged lands under the agency's jurisdiction; and

(f) For an activity proposed on public lands at a site that may be of Indian tribal religious or cultural importance, the Federal land manager has notified the appropriate Indian tribe.

**Guideline 3: Issue contracts for the preservation, sale, or collection of wrecked, abandoned, or derelict shipwrecks in accordance with Federal property statutes.** Requests to search for and preserve, sell, or collect any shipwreck that may have been wrecked, abandoned, or become derelict on public lands must be reviewed and approved or denied in accordance with section 310 of title 40 of the U.S. Code and implementing procedures established by the General Services Administration. The General Services Administration generally issues contracts for the preservation, sale, or collection of property (or related proceeds) that may have been wrecked, abandoned, or become derelict on public lands when the following conditions are met:

(a) The applicant pays a nonrefundable service charge of \$500 to cover the U.S. Government's administrative costs for processing the contract;

(b) The contract will result in no cost or expense to the U.S. Government, meaning that the contractor agrees to reimburse the U.S. Government for all expenses it may incur in connection with the search and posts a bond to cover any costs that the Federal land manager may incur related to the search;

(c) The Federal land manager gives permission;

(d) The Federal land manager determines that the property that is the object of the search is not of "archeological interest," as defined

under the Archaeological Resources Protection Act (16 U.S.C. 470bb);

(e) The contract is in compliance with sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2), the Antiquities Act (16 U.S.C. 431-433), the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm), the Archeological and Historic Preservation Act (16 U.S.C. 469-469c), and any other Federal statutes governing the management of the area to be searched;

(f) The Federal land manager agrees to provide security and protective custody for any property recovered;

(g) The U.S. Government retains any artifacts or other items recovered that it determines are an archeological resource;

(h) The gross value of any property recovered, exclusive of any portion that is determined to be an archeological resource, is shared on a 50-50 basis between the U.S. Government and the parties to the contract, but only after the U.S. Government determines the property's nature, value, and any rights of third parties; and

(i) Any other requirements that the General Services Administration or the Federal land manager may deem to be in the best interests of the Federal Government.

Persons interested in searching for shipwrecks that may have been wrecked, abandoned, or become derelict on public lands should contact the Property Management Division of the Federal Supply Service in the General Services Administration, Washington, DC 20406 and the applicable Federal land manager for further information.

**Guideline 4: Consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act.** In accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f), Federal agencies must take into account the effect of any proposed Federal, federally assisted, or federally licensed undertaking on any shipwreck that is included in or eligible for inclusion in the National Register of Historic Places. In addition, agencies must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the proposed undertaking. Agencies must take these actions prior to approving the expenditure of any Federal funds or prior to issuing any license, as the case may be. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for



Federal agencies to fulfill their section 106 responsibilities.

(a) When historic shipwrecks entitled to U.S. sovereignty may be affected, the applicable U.S. Government agency owner (generally the U.S. Department of the Navy for U.S. vessels and the General Services Administration for Confederate vessels) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(b) When other historic shipwrecks entitled to sovereign immunity may be affected, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted to secure comments from the applicable flag nation.

(c) When other federally-owned historic shipwrecks or State-owned historic shipwrecks may be affected, the applicable Federal or State agency owner (and manager, if different from the owner) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(d) When other non-abandoned historic shipwrecks may be affected, the person or party who holds title to the shipwrecks should be afforded the opportunity to be a consulting party during the section 106 process.

(e) During the section 106 consultation process, Federal agencies should contact "interested persons" who, as defined in paragraph 800.2(h) of the Advisory Council on Historic Preservation's regulations (36 CFR part 800), are organizations and individuals concerned with the effects of an undertaking on historic properties. "Interested persons" may have information about the presence of historic shipwrecks within the area of potential impact of the proposed undertaking, information about other non-historical values and current uses of those shipwrecks, and information about possible effects that the proposed undertaking may have on the sites. "Interested persons" would include, but not be limited to:

(1) Federal, State, regional, and local governmental agencies, Indian tribes, and private landowners who control or have jurisdiction over the submerged lands or adjacent lands to be affected;

(2) Sport divers, dive boat operators, commercial and recreational fishermen, and commercial salvors who are interested in shipwrecks in the area of potential impact;

(3) Underwater archeologists, maritime historians, maritime curators, and nautical conservators who are interested in historic shipwrecks in the area of potential impact; and

(4) Archeological, historical, and maritime societies, museums, and other organizations that are interested in historic shipwrecks in the area of potential impact.

*Guideline 5: Conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act.* Direct Federal and federally funded, licensed and permitted activities affecting shipwrecks located in the coastal zone may be subject to Federal consistency reviews conducted in accordance with section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and its implementing regulations (15 CFR part 930). Federal agencies whose activities may affect shipwrecks located in the coastal zone should consult and cooperate with the State's coastal zone management office about any necessary compliance with this requirement prior to approving the expenditure of any Federal funds or prior to issuing any license or permit, as the case may be. Federally funded, licensed and permitted activities subject to this requirement must be in compliance with the State's federally approved coastal zone management program, including any enforceable shipwreck management laws, regulations, policies, and procedures that have been incorporated into that program. Direct Federal activities must be conducted, to the maximum extent practicable, in a manner consistent with the State's federally approved coastal zone management program.

*Guideline 6: Use applicable Federal standards and guidelines.* Applicable Federal standards and guidelines should be used by Federal agencies in the management of shipwrecks under their ownership or control. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, particularly sections that provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, and establishing volunteer programs;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, surveying, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Federal Agency Responsibilities Under Section 110 of

the National Historic Preservation Act" (53 FR 4727; Feb. 17, 1988), which are designed to assist Federal agencies in complying with their responsibilities under section 110 of that Act;

(d) The National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(e) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

*Guideline 7: Protect shipwrecks in or on a State's submerged lands located in units of the national park system and other federally managed areas.* Units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system generally are created either to protect significant cultural, biological, or natural resources or to provide recreational and educational opportunities for the public. While the Federal Government holds fee simple title to most of these areas, some lands are owned by the States. Notwithstanding who holds title to the lands, national parks, national wildlife refuges, national forests, and national marine sanctuaries should be managed in such a manner that the resources they contain (including publicly-owned shipwrecks) are protected and maintained for long-term public use and enjoyment. Where the U.S. Government manages submerged lands of a State located within units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system, the respective Federal land managers and the State should enter into written agreements (or amend existing agreements) for the purpose of specifying how State-owned shipwrecks are to be managed. Agreements should stipulate that the State-owned shipwrecks shall be managed and protected in a manner consistent with how federally-owned shipwrecks are managed and protected. In addition, agreements should specify that souvenir collecting, commercial salvage, treasure hunting, and other damaging activities shall be prohibited at historic shipwrecks.



### C. Funding Shipwreck Programs and Projects

Adequate funding is the key to the successful operation of programs for the management of publicly-owned shipwrecks. Without sufficient funding, a State or Federal agency would have difficulty carrying out its responsibilities under the Act and other applicable State and Federal property, land management, and historic preservation statutes and regulations as they relate to shipwrecks. These responsibilities include the survey, identification, documentation, evaluation, and protection of shipwrecks. In addition, it includes the study and preservation of historic shipwrecks and the storage, maintenance, conservation, study, interpretation, and exhibition of artifacts and other materials recovered from historic shipwrecks. It also includes providing public access to shipwrecks for recreational purposes and regulating public and private sector recovery of shipwrecks.

Expenses associated with the management of publicly-owned historic shipwrecks can be exorbitant, particularly costs to conduct scientific research underwater and to maintain and conserve artifacts and materials recovered from an underwater environment. But, the results of research, conservation, interpretation, and exhibition efforts also can generate substantial revenues, sometimes in excess of the costs, primarily through increased tourism.<sup>4</sup>

The following guidelines are offered to assist the States and Federal agencies in securing and allocating funds and in generating revenues to carry out responsibilities to manage publicly-owned shipwrecks under their respective control.

**Guideline 1: Fund shipwreck management programs and projects from annual appropriations.** State and Federal agency shipwreck management programs should be funded from annual appropriations. Separate appropriation requests should be made to conduct studies at a particular shipwreck site or to study an area for possible designation as an underwater park or preserve. Special studies should be undertaken only when a commitment is made to fund the study to completion. This means that when a special request to excavate a historic shipwreck is

approved by a State legislature or the U.S. Congress, sufficient monies should be made available not only for the initial excavation, but also for the subsequent laboratory analysis, conservation treatments, storage and maintenance in an appropriate repository, report preparation, and public interpretation. Because studies of shipwreck sites ordinarily are completed over the course of several years, multiyear budget estimates should be prepared and submitted as part of the initial appropriation request for each project.

**Guideline 2: Collaborate with other State and Federal agencies to reduce costs.** Where State and Federal agencies own or control contiguous submerged lands, they should enter into written agreements to coordinate their shipwreck management program activities. Jointly conducting archival research and field surveys that are regional in scope and encompass the submerged lands of all of the respective agencies would reduce overall costs, require fewer staff, eliminate duplication of effort, and result in a more complete and extensive assessment of known and potential shipwrecks in the areas studied. Jointly establishing, operating, and using conservation laboratories and repositories would reduce overall costs associated with storing, maintaining, and conserving artifacts and other materials removed from shipwreck sites.

**Guideline 3: Fund projects from the Historic Preservation Fund.** Section 4(b) of the Act says that funds available to States from historic preservation (HPF) grants shall be available, in accordance with Title I of the National Historic Preservation Act (16 U.S.C. 470), for the study, interpretation, protection, and preservation of historic shipwrecks and properties. HPF grants to the States are available only after appropriation by the U.S. Congress and thus may or may not be available. When HPF grants are made to the States without restrictions to the contrary, State historic preservation offices should include activities relating to historic shipwrecks within the scope of their program of eligible activities. In particular, historic shipwrecks should be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan. This would enable the State to more effectively identify management needs, set priorities, undertake archival research, survey, identify, document, evaluate, interpret, protect, and preserve historic shipwrecks located in State waters.

**Guideline 4: Fund projects using Coastal Zone Management grants.** The

National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce has identified sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455a, and 1456b) as potential funding authorities to assist States in developing and implementing State shipwreck management programs and related activities. Coastal Zone Management (CZM) grants would be available only to those States that have federally approved coastal zone management programs. Subject to annual appropriation by the U.S. Congress, without restrictions to the contrary, CZM grants may be made available through a State's coastal zone management office as follows:

(a) Section 306 CZM grants may be used to assist in the development of State shipwreck management programs. To be eligible for implementation grants under sections 306, 306A, and 309, shipwreck management programs must be incorporated into the State's federally approved coastal zone management program.

(b) Section 306A CZM grants may be used for low cost construction, acquisition or education activities associated with the management of shipwrecks in the coastal zone. To be eligible, projects must meet one of the following objectives:

(1) Preservation or restoration of specific areas that are designated under the State's coastal zone management program because of their conservation, recreational, ecological or esthetic values, or because of their national significance;

(2) Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under the State's coastal zone management program as "areas of particular concern;" or

(3) Provide for increased access to public beaches, coastal waters and other coastal areas.

(c) Section 309 CZM grants may be used for projects that address interstate or regional shipwreck management problems and solutions.

CZM grants could be of tremendous value to States as sources of funding for managing State-owned shipwrecks. Specific activities that a State may undertake using CZM grants would include, but not be limited to, designating areas within an underwater park in the coastal zone as "areas of particular concern" because they contain nationally significant historic shipwrecks, rehabilitating piers and replacing pilings to increase public

<sup>4</sup> The best example is in Sweden, where sufficient public and private funds were made available to document, raise, maintain, conserve, interpret, and exhibit the intact 17th century Swedish warship *Vasa*. Revenues generated annually into the Swedish economy by tourists visiting the *Vasa* are said to be \$275 million.



access to and recreational use of State-owned shipwrecks, installing bulkheads to increase public safety when accessing shipwrecks, and developing educational and interpretive materials about shipwreck sites in the coastal zone.

**Guideline 5: Use other appropriate Federal funding authorities.** The National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Archeological and Historic Preservation Act (16 U.S.C. 469-469c) identify several methods for Federal agencies to ensure that sufficient monies are available to identify, evaluate, document, and recover data from historic shipwreck sites that may be affected by a Federal undertaking or a federally assisted, licensed or permitted project or program. Those methods include, but are not limited to, the following:

(a) For Federal undertakings, Federal agencies may use appropriated project funds to conduct underwater surveys and recover historic shipwrecks that will be impacted by the proposed undertaking. When estimating a project's costs, costs for surveys and shipwreck identification and evaluation efforts should be included in the project's planning budget while costs for documentation and excavation of sites and costs for conservation and preservation of recovered artifacts, materials, and associated records should be included in the project's mitigation budget;

(b) For Federal projects and programs carried out by a State agency on behalf of the Federal agency, Federal agencies may use appropriated funds to reimburse the State agency for costs incurred conducting preservation activities;

(c) For federally assisted projects, Federal agencies may use appropriated funds to reimburse grantees for costs incurred conducting preservation activities as a part of the grant project; and

(d) For federally licensed or permitted projects, Federal agencies may charge reasonable costs for preservation activities to Federal licensees and permittees as a condition to the issuance of the license or permit.

**Guideline 6: Apply for other public and private sector grants.** Subject to annual appropriations by the U.S. Congress for such purposes, other public sector grant monies may be available for shipwreck projects. Federal granting agencies that may have funds available for shipwreck projects would include, but not be limited to, the National Science Foundation, the National Endowment for the Humanities, and the National Trust for Historic Preservation. In addition, private foundations,

corporations, and businesses may have grant monies available for shipwreck projects; private sector grants often are contingent upon the grantor receiving exclusive media or advertising rights connected with the project.

**Guideline 7: Encourage other States, Federal agencies, and nations to co-sponsor shipwreck projects.** Another State, Federal agency, or sovereign nation may be interested in co-sponsoring or otherwise participating in projects at shipwrecks to which they have an historical connection. When there is reason to believe that another party may be interested, they should be contacted and encouraged to participate. In addition, prior to conducting any studies of vessels entitled to sovereign immunity, the applicable U.S. Government agency or sovereign nation holding title must be contacted for permission. (Any contact with foreign sovereigns must be via the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State.)

**Guideline 8: Authorize the acceptance of donations and the ability to enter into cooperative agreements.** In order to enable non-government parties to assist in locating, documenting, evaluating, studying, interpreting, and protecting publicly-owned shipwrecks, States and Federal agencies should ensure that they have the authority to:

(a) Accept donations of funds, personal property and services from other parties; and

(b) Enter into cooperative agreements with scientific and educational institutions.

**Guideline 9: Encourage volunteers to participate in shipwreck projects.** Dive clubs, sport divers, and non-divers should be encouraged to volunteer their skills in shipwreck projects. Project activities often of interest to volunteers are assisting in the conduct of archival research, participating in surveys to locate shipwrecks, verifying remote sensing data that indicates the presence of shipwreck sites and anomalies, participating in test excavations, mapping and photographing shipwreck sites, helping evaluate a shipwreck's multiple values and uses, helping prepare nominations for the National Register, and assisting in the conservation of recovered artifacts. In addition, dive shops, dive boat operators, and other maritime and non-maritime corporations and businesses should be encouraged to donate the use of vessels, supplies, and equipment in shipwreck projects. Where shipwreck projects are funded in part by Federal grants, the monetary value of the volunteered and donated services,

vessels, supplies, and equipment may be used under certain Federal grant programs as a match for Federal funds.

**Guideline 10: Encourage scientific and educational organizations to participate in shipwreck projects.** Universities, colleges, and other scientific and educational organizations that offer avocational or professional underwater archeology courses should be encouraged to participate in shipwreck research projects; such organizations often are willing to participate and use projects as field schools to train students. In addition, universities and colleges that offer professional underwater archeology degree programs should be encouraged to participate in shipwreck projects; students in degree programs often are willing to participate and use projects as research sites for masters theses and doctoral dissertations.

**Guideline 11: Require commercial salvors to post performance bonds.** Any contracts awarded to commercial salvors for the salvage of shipwrecks should require the salvor to post a performance bond in an amount that would cover costs associated with the activity. The posting of a performance bond should ensure that sufficient funds would be available to complete the salvage activity according to the terms of the contract, should the salvor be unable to do so. The posting of a performance bond would be particularly important where a contract is awarded by a State for the salvage of an historic shipwreck since the costs associated with conserving, maintaining, and storing artifacts and materials recovered from an underwater environment can be high.

#### *D. Surveying and Identifying Shipwrecks*

Section 6(b) of the Act requires that adequate notice be given to the public of the location of any shipwreck to which title is asserted under the Act. The purpose of providing public notice is to ensure that sport divers, dive boat operators, commercial and recreational fishermen, operators of trawlers and dredgers, and others know which shipwrecks are historically significant. To comply with this requirement, the States and Federal agencies should actively work to develop a detailed understanding of the number, nature, location, and historical significance of shipwrecks in or on their submerged lands. Such an understanding is possible only through a systematic survey of submerged lands and identification of shipwrecks.



The following guidelines are offered to assist the States and Federal agencies in surveying for and identifying shipwrecks located in or on submerged lands under their ownership or control.

**Guideline 1: Prepare an archeological assessment for the survey area.** Prior to conducting the field survey, underwater archeologists and maritime historians should assess the potential for and predict the locations of shipwrecks that may be present in the area to be surveyed.

(a) Assessments should be based on available primary and secondary sources about shipwrecks as well as wrecked vessels that were salvaged or refloated. Information about the presence of shipwrecks should be solicited from sport divers, dive clubs, charter boat operators, commercial salvors, fishermen, marine surveyors, local residents, and other knowledgeable individuals. Records of the U.S. Coast Guard and the U.S. Army Corps of Engineers should be examined for evidence of abandoned shipwrecks. Annual reports and records of the U.S. Army Corps of Engineers on ports, harbors, and waterways should be examined for evidence of prior dredging, filling and channel modification that may have damaged or destroyed shipwrecks. Reports (prepared for the Minerals Management Service, U.S. Department of the Interior) about the potential for shipwrecks and other historic properties on the outer continental shelf also should be examined.

(b) Assessments should identify navigational hazards (such as submerged outcrops), climatological factors (such as hurricanes) and historical events (such as naval engagements) that may have caused vessels to founder or wreck. Where individual shipwreck sites are known or suspected, the assessment should summarize the vessel's structural features, the wreck incident, any salvage operations, and any prior archeological surveys or excavations. The approximate or known, verified location of the shipwreck should be plotted on nautical charts to determine areas that should be surveyed.

**Guideline 2: Prioritize surveys.** Initially, surveys should be focused primarily in areas where shipwrecks are known or expected to be found. In addition, priority should be given to areas subject to high visitor use, dredging, dumping, trawling, development, natural degradation, siltation, and other activities that may damage shipwrecks or make them inaccessible. Once these areas are surveyed, future survey work should be

focused in areas known to have been used during periods of exploration and colonization, but where there is little historical documentation about shipwrecks. When the archeological assessment indicates that no shipwrecks are known or expected to have occurred in a given area, the area should be assigned a low priority for survey until new information indicates otherwise.

**Guideline 3: Coordinate archival research and field survey efforts with other State and Federal agencies.** To the extent possible, archival research and field surveys should be coordinated and conducted jointly with those being undertaken or authorized by other State and Federal agencies that have responsibilities for contiguous submerged lands. At a minimum, the results of archival research and field surveys should be shared with those State and Federal agencies. In addition, archival research and field surveys should be coordinated with and the results provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that information on historic shipwrecks may be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan.

**Guideline 4: Use scientific methods and techniques to conduct field surveys.** Field surveys to locate shipwreck sites should employ scientific methods and techniques. Magnetometers, side-scan sonar, subbottom profilers, and remotely operated vehicles often can provide cost effective coverage for deep water sites. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of an area. Surveys should be conducted by a team that includes, at a minimum, persons trained in the conduct of marine surveys, the use of remote sensing equipment, and the examination and analysis of remote sensing readings for the purpose of identifying shipwrecks. All tapes, equipment readings, field notebooks, and logs generated during surveys should be collated and archivally saved for future study. Reports should be prepared and published that describe the areas surveyed, survey methods used and the results.

**Guideline 5: Record shipwreck locations.** Areas surveyed should be recorded using accurate positioning systems to determine wreck locations. The location of each shipwreck located during the survey should be recorded on a map by using a standard coordinate system (such as Universal Transverse

Mercator grid, Loran C, latitude and longitude, or compass bearings).

**Guideline 6: Ground-truth shipwrecks and anomalies using non-destructive methods.** All shipwrecks and unverified located during a remote sensing survey should be ground-truthed through seabottom inspection—either by remotely operated vehicle or by divers. Shipwrecks should be examined to determine the nature, extent and integrity of the wrecked vessel, surviving cargo, and associated scattered wreckage, and to locate any visible human remains. Shipwrecks should be examined in as non-destructive and non-disturbing a manner as possible. Determinations of a shipwreck's type, age, condition and, when possible, specific identity should be made without test excavations or removal of artifacts or other materials. When test excavations are necessary or artifacts or other materials must be removed (such as when the shipwreck is embedded or encrusted), the amount to be excavated or removed should be as limited as possible to make evaluations, and be done using archeological methods. This is particularly important in cases where historical value is suspected. Any artifacts or other materials recovered from historic shipwrecks should be conserved by a nautical conservator.

**Guideline 7: Provide for the treatment of human remains in shipwrecks.** To the extent possible, human remains in shipwreck should be left in place as burials at sea. However, when remains (whether of known or unknown persons and whether intact or decomposed) are being disturbed by unavoidable or uncontrollable human activity, they should be removed and appropriately disposed of. Where the remains are of known individuals, a reasonable effort should be made to contact relatives of the deceased to discuss the removal and disposition of the remains. Until human remains are removed, activities that would disturb them should be prohibited.

**Guideline 8: Confirm the abandonment of shipwrecks.** When there is reason to believe that a shipwreck may not be abandoned, prior to assuming title or taking any action that would affect the shipwreck, steps should be taken to confirm that the shipwreck is abandoned.

(a) Vessels grounded or sunk in navigable waters of the United States are subject to provisions in the Rivers and Harbors Act of 1899 (33 U.S.C. 409). When a shipwreck is thought to have wrecked after enactment of this statute, the U.S. Coast Guard and the U.S. Army



Corps of Engineers should be contacted to determine if the owner of the wrecked vessel provided legal notice of abandonment in accordance with that Act.

(b) When a shipwreck is thought to be a U.S. or Confederate warship or other vessel entitled to U.S. sovereignty, the Office of the Judge Advocate General, U.S. Department of the Navy, the General Services Administration should be contacted for assistance in determining proper ownership.

(c) When a shipwreck is thought to be a foreign flag warship or other foreign flag vessel entitled to sovereign immunity, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted for assistance in determining proper ownership. (Under customary international law, any contact with other nations about their sunken warships or other vessels is through the U.S. Department of State.)

(d) When a shipwreck is not abandoned, the title holder should be contacted concerning the management and disposition of the wrecked vessel, its cargo, and other contents.

**Guideline 9: Provide adequate public notice of the locations of shipwreck sites.** The Act requires that the public be given adequate notice of the location of any shipwreck to which title is asserted under section 6 of the Act. At a minimum, the public should be provided with the names and locations of shipwrecks identified during field surveys as well as information on whether the shipwrecks are historic or non-historic. Appropriate methods of giving public notice would include, but not be limited to, publishing notices in local newspapers, diver publications, and the *Federal Register*; posting notices at marinas and dive shops; marking nautical charts; and placing signs at shipwreck sites. When there is reason to believe that disclosure of the exact location (such as Loran coordinates) of a particular historic shipwreck would lead to vandalism, pilferage, or other damage to the site, locational information of a more general nature should be given for that site. However, under the Act, some locational information must be given. In such situations, the level of specificity of the information given should be determined on a case by case basis and should reduce the likelihood of the anticipated damage to the particular historic shipwreck. To withhold from the public even general locational information on shipwrecks would be inconsistent with the Act and the "Abandoned Shipwreck Act Guidelines."

#### *E. Documenting and Evaluating Shipwrecks*

Documenting a shipwreck (whether it is historic or non-historic) provides important baseline information for long-term management of the site. Once a shipwreck has been documented, it is then possible to assess changes to it and the surrounding area over time. These changes may result from siltation, water currents, water pollution, dredging, trawling, anchor damage, vandalism, or intensive diver use. Over time, where comparing a shipwreck's current condition to the original documentation shows significant deleterious change or damage and it is determined that the shipwreck should be preserved, then steps can be taken to protect the shipwreck from further damage.

Documenting shipwrecks also aids in evaluation and interpretation efforts. Shipwrecks generally have multiple values and uses that must be taken into consideration for management purposes. The various values and uses shipwrecks may have include, but are not limited to:

(a) Historical values associated with shipwrecks that are eligible for listing in the National Register of Historic Places, like being associated with a significant historical event or personage, possessing distinctive characteristics of a particular vessel type, or containing information important in the nation's history;

(b) Recreational and educational values associated with public use and enjoyment of shipwrecks through such activities as scuba diving, snorkeling, spearfishing, underwater photography, visiting maritime museums, and participating in shipwreck research projects;

(c) Tourism and other monetary values associated with public and private profit making through such activities as operating a dive boat company, salvaging shipwrecks or valuable cargoes, being a commercial fisherman, making movies, and publishing popular books;

(d) Biological values associated with habitat areas and coralline formations that develop in and around shipwreck sites; and

(e) Memorial values attached to warships whose wreck events are associated with the deaths of service personnel, even if human remains are no longer present or visible.

The following guidelines are offered to assist the States and Federal agencies in documenting and evaluating shipwrecks—as they are discovered—that are located in or on submerged lands under their ownership or control.

**Guideline 1: Make a photographic record of shipwrecks.** Where possible, shipwrecks should be photographed using black and white photographic film and color slide film. Photographs of non-embedded shipwrecks should include shots of the wrecked vessel, artifacts, and important features. Embedded shipwrecks should be photographed without removing bottom sediments or encrustations. All photographs should be clearly labeled and, where possible, contain scales and compass points. Where possible, a video survey should be made, particularly of historic shipwrecks. Video surveys should be oriented to a map of the site that shows the passes over and through the shipwreck. Several passes should be made to provide as comprehensive a video tour of the shipwreck as possible. Detailed video footage should be made of noteworthy, fragile or dangerous features. Where possible, video footage should include a scale and an annotated time reference. When the identity of a shipwreck is known, photographs of the wrecked vessel when afloat and of the actual wreck event should be obtained, where they exist.

**Guideline 2: Collect and evaluate information about each shipwreck's history, values, and uses.** When the identity of a shipwreck is known, archival information should be collected about her construction and use history. Information about a shipwreck's recreational and educational values and uses should be collected from underwater archeologists, maritime historians, maritime museums, maritime historical societies, and historic preservation officials. Information about a shipwreck's recreational and educational values and uses should be sought from dive clubs, sport divers, dive boat operators, recreational fishermen, maritime museums, maritime historical societies, and tourism officials. Information on a shipwreck's tourism and other monetary values should be sought from tourism officials, commercial salvors, commercial fishermen, dive boat operators, dive shops, and marina operators. Information on a shipwreck site's biological values should be collected from marine biologists and fisheries officials. Information about a wrecked warship's memorial values should be sought from the U.S. Department of the Navy and the General Services Administration (for U.S. and Confederate warships) and the U.S. Department of State (for warships belonging to a foreign flag nation). Evaluations of a shipwreck's history, values and uses should be made



available for public review and comment by interested professional, avocational and other interest groups, appropriate State and Federal agencies, and any shipwreck advisory boards.

**Guideline 3: Nominate historically significant shipwrecks to historic registers.** When a shipwreck appears to be historically significant, sufficient information should be gathered to nominate it to the National Register of Historic Places<sup>6</sup> and any State historic registers. Shipwrecks that possess exceptional value as commemorating or illustrating the history of the United States should be nominated for designation as National Historic Landmarks.<sup>6</sup> Nominations should be subject to professional and public review by the various interest groups prior to submission to the State's historic preservation office or to the National Register.

**Guideline 4: Prepare site maps, drawings, and reports of historic shipwrecks.** Archeological site maps should be prepared for historic shipwrecks. Drawings should be made of unique, representative or significant features of historic shipwrecks. When measured drawings are made of substantially intact historic shipwrecks and hulks, they should conform, when possible, to the National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988). Reports should be prepared about historic shipwrecks. Reports should contain information gathered during archival research, field surveys, any archeological excavations, and any other studies. Reports also should contain recommendations about conducting future studies and about managing the historic shipwreck site. State and Federal agencies are encouraged to use the National Park Service's Submerged Cultural Resources Study series as a model for report preparation.<sup>7</sup> Publications in this series also contain examples of archeological site maps and line drawings that resulted from diving surveys at historic shipwrecks in units of the national park system.

**Guideline 5: Prepare a shipwreck inventory.** An inventory of all known, surveyed shipwreck sites should be

prepared and maintained. The shipwreck inventory should contain, but not be limited to, the following information:

- (a) Popular name and, when known, the vessel name, if different;
- (b) Vessel size, type, and age;
- (c) When known, the wreck date and function at the time of the wreck incident;
- (d) Location, including whether it is in an underwater park or preserve;
- (e) Whether it is intact or broken into scattered pieces;
- (f) Whether it is buried or encrusted in coralline formations;
- (g) Whether it is listed in or determined eligible for the National Register, or is potentially eligible for listing;
- (h) Whether it is listed in a State registry of historic properties; and
- (i) Owner and manager, if different.

State and Federal agencies are encouraged to use the National Park Service's National Maritime Initiative Inventory format as a model.<sup>8</sup> Information on historic shipwrecks also should be provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that it may be incorporated into the State's inventory of historic properties and the State's comprehensive historic preservation plan.

**Guideline 6: Maintain documentation on shipwreck sites.** Documents such as field notes, historical information, photographs, site maps, drawings, inventory forms, and reports relating to each vessel listed in the shipwreck inventory should be maintained. Documentation for each shipwreck site should remain together and be deposited, when possible, in a central repository that houses similar documentation on other shipwrecks under the State or Federal agency's ownership or control. However, for safety reasons, duplicate copies of documents should be made and retained in separate locations. Maintaining copies of documentation in multiple locations also results in greater accessibility to the information by researchers and other interested parties.

**Guideline 7: Make documentation accessible to interested parties.** Shipwreck documentation should be made accessible to the public for

interpretive and educational purposes. Shipwreck documentation (particularly maps and drawings) and information about dangers associated with specific sites should be published. However, prior to releasing maps and associated documentation that contain the exact location of historic shipwrecks, States and Federal agencies should assess the risk of theft, vandalism, or other damage to the sites. Documents that contain precise locational information for historic shipwrecks should be considered confidential only when there is reason to believe that their disclosure would lead to vandalism, pilferage, or other damage to a particular shipwreck site. In such cases, the precise locational information should be replaced with information of a more general nature so that the documents may be made available to the public.

#### **F. Providing for Public and Private Sector Recovery of Shipwrecks**

Section 4(a) of the Act says that the U.S. Congress intends for the States to allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites. Public sector recovery activities would include, but not be limited to, studies and excavations of shipwrecks by the States and Federal agencies for management, scientific or mitigation purposes. Private sector recovery activities would include, but not be limited to, the collection of artifacts and other materials from shipwrecks by sport divers who desire personal souvenirs, the salvage of shipwrecks by commercial salvors and treasure hunters for profit-making purposes, and the study and excavation of shipwrecks by scientific and educational institutions for scientific purposes.

Clearly, public and private sector recovery of shipwrecks may affect historical values of shipwrecks and the environmental integrity of shipwreck sites. Recovering an historic shipwreck in an unscientific manner certainly would destroy the site and the historical information it contains. Recovery it using explosives, dredges or propeller wash deflectors also would destroy the environment surrounding the site. Recovering it scientifically and conserving and maintaining the recovered artifacts, other materials, and associated records would mitigate the loss of the site and would preserve the historical information.

Values other than historic and environmental ones also may be affected by public and private sector

<sup>6</sup> Criteria for evaluation and procedures for nominating historic properties to the National Register are found in regulations at 36 CFR part 60.

<sup>7</sup> Criteria for national significance and procedures for designating National Historic Landmarks are contained in regulations at 36 CFR part 65.

<sup>8</sup> Information on the Submerged Cultural Resources Study series may be obtained by writing to the Submerged Cultural Resources Unit, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior, P.O. Box 728, Santa Fe, NM 87504-0728.

<sup>8</sup> Information on the format of the National Maritime Initiative Inventory may be obtained by writing to the National Maritime Initiative, History Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.



recovery activities. For example, stripping a shipwreck valued primarily for recreational purposes of its artifacts and other materials would reduce, if not eliminate, those values. A substantial reduction in sport diver activity at the site could, in turn, have an adverse effect on tourism and coal business (like dive boat operators and marina operators). Destroying a shipwreck site valued for surrounding habitat areas or coralline formations would have an adverse effect on biological values associated with the shipwrecks. This could, in turn, have an adverse effect on commercial and recreational fishing.

Under the Act, the States are entrusted to manage State-owned shipwrecks for the benefit of the public. Since any recovery activity (whether it is public or private) at shipwreck sites has the potential to damage and destroy the site, its various values and uses, and the surrounding environment, it is the responsibility of the States to ensure that any public and private sector recovery of State-owned shipwrecks is in the best interests of the public. The following guidelines are offered to assist the States in ensuring that public and private sector recovery activities are in the public interest.<sup>9</sup>

**Guideline 1: Establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks.** Interested persons and groups, appropriate State and Federal agencies, and any State shipwreck advisory board should be consulted about the establishment of policies, criteria and procedures that would allow for appropriate public and private sector recovery of State-owned shipwrecks. At a minimum, the State should establish:

(a) Policies that set forth the circumstances under which the various kinds of public and private sector recovery activities at State-owned shipwrecks would and would not be in the public interest;

(b) Procedures for the public and private sector to apply for permits, licenses or contracts to recover State-owned shipwrecks;

(c) Criteria and procedures for the State to evaluate applications for and issue or deny permits, licenses and contracts to recover State-owned shipwrecks;

<sup>9</sup> Federal agencies must follow the requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470 *aa-mm*), section 310 of title 40 of the U.S. Code, and other applicable statutes and regulations governing public and private recovery of federally-owned and controlled archeological resources and other property (see applicable guidelines contained in subpart B of part II of these "Guidelines").

(1) The State's historic preservation office and underwater archaeology office (or archeology office, in the absence of an underwater archeology office) should review and approve applications for permits, licenses and contracts to recover any State-owned shipwreck that is (or may be) historic; and

(2) The issuance of any permit, license or contract should be conditioned with appropriate terms and conditions to ensure that the authorized recovery activity is in the public interest;

(d) Procedures for the State to periodically monitor (both on and off-site) permitted, licenses and contracted recovery work to ensure that it is in compliance with any attached terms and conditions;

(1) State officials who monitor permitted, licensed and contracted work should be given the authority to immediately suspend any permit, license or contract that appears not be in compliance with the terms and conditions of the permit, license or contract;

(2) Once work is suspended, work should not resume until the State has conducted a thorough review and notified the permittee, licensee or contractor of its findings; and

(3) Costs incurred by the State to monitor permitted, licensed and contracted work should be paid with State monies and not be reimbursed by the permittee, licensee or contractor; and

(e) Procedures and criteria that provide, as appropriate, for the transfer of title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties.

**Guideline 2: Authorize only those recovery activities at State-owned shipwrecks that are in the public interest.** Decisions to allow for the recovery of State-owned shipwrecks should be reached on a case by case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects to be caused by the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector recovery activity is in the best interests of the public, the State should consider the following:

(a) Is the subject shipwreck, in fact, State-owned? (The States cannot authorize public or private sector recovery at any shipwreck that is

federally-owned, privately-owned, or entitled to sovereign immunity, even though such shipwrecks may lie in State waters.)

(b) What are the shipwreck's current and potential future values and uses? Is the proposed recovery consistent with those values and uses? Will the proposed recovery enhance any of those values and uses? Will it irrevocably damage or destroy any of those values and uses?

(c) Is the shipwreck listed in or determined eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?

(d) Where the shipwreck may be historic, will be the proposed recovery result in a nomination to the Secretary of the Interior to list the shipwreck in the National Register of Historic Places? Will it result in a recommendation to the Secretary of the Interior to designate the shipwreck as a National Historic Landmark?

(e) Where the shipwreck is (or may be) historic:

(1) Have the State's historic preservation office and underwater archaeology office (or archeology office, in the absence of an underwater archeology office) been provided with an opportunity to comment on the proposed recovery? Do they approve of the proposal? Have they attached any terms and conditions to ensure that preservation of the shipwreck's historical information?

(2) Is the proposed recovery consistent with the State's comprehensive historic preservation plan?

(3) Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?

(4) Will the proposed recovery be conducted in a professional manner to preserve the shipwreck's historical information? (See Guideline No. 4 in this subpart for a discussion on conducting recovery activities in a professional manner.)

(5) Will the proposed recovery result in the private ownership or sale of any of the artifacts and other materials recovered? If so, will those items be properly conserved and studied and be made available for public exhibition and interpretation?

(f) Is the shipwreck located in a State underwater park or preserve? If so, is the proposed recovery consistent with the unit's management plans?

(g) Is the shipwreck located in or on a State's submerged lands located within a unit of the national park system, the national wildlife refuge system, the



national forest system, or the national marine sanctuary system? If so, is the proposed recovery consistent with the unit's management plans, the written agreement between the State and the Federal land manager, and applicable Federal statutes, regulations, policies, and standards?

(h) Is the shipwreck located in any other area (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation? If so, is the proposed recovery consistent with the area's management plans and applicable statutes, orders and regulations?

(i) Is the shipwreck currently being damaged or destroyed by natural processes (such as erosion), by an approved State or Federal undertaking (such as dredging or development) or by other human activity (such as anchor damage)? Is it threatened with imminent and unavoidable damage or destruction by such processes, undertakings or activities?

(j) Where the proposed recovery will damage or destroy the environment surrounding the shipwreck, will the area be restored to its original condition?

(k) Will the proposed recovery impede navigation in existing Federal navigation channels?

(l) Has the applicant obtained other necessary State or Federal permits (such as permits to disturb the bottomlands)?

**Guideline 3: Protect particular State-owned shipwrecks from commercial salvage, treasure hunting and private collecting activities.** Commercial salvage, treasure hunting and personal collecting activities, no matter how they are conditioned and monitored by the State, are conducted for the personal gain of individuals. Shipwrecks that are particularly significant historically or are in protected areas set aside by some formal mechanism should be preserved for the public and generally not be available for commercial salvage, treasure hunting or personal collecting. It is recommended that, at a minimum, any State-owned shipwreck that meets any of the following criteria should not be available for commercial salvage, treasure hunting or personal collecting:

(a) Shipwrecks designated as National Historic Landmarks or, pending a written determination by the Secretary of the Interior, shipwrecks under consideration for designation as National Historic Landmarks;

(b) Shipwrecks located in State underwater parks or preserves;

(c) Shipwrecks located in or on a State's submerged lands located within units of the national park system, the national wildlife refuge system, the

national forest system, or the national marine sanctuary system; or

(d) Shipwrecks located in other areas (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation.

**Guideline 4: Require any recovery at State-owned historic shipwrecks to be done in a professional manner.** The study and recovery of historic shipwrecks enables underwater archeologists and maritime historians to collect new data or confirm archival documentation regarding a specific vessel, a type or method of construction, an historical event or period, or a culture. When it is determined to be in the public interest to authorize the recovery of artifacts or materials from historic shipwrecks, the recovery operation (whether it is public or private) should be done in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983) and other applicable historic preservation standards and guidelines. At a minimum, any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks should contain the following terms and conditions:

(a) The permittee, licensee or contractor has secured any other necessary State or Federal permits;

(b) A professional underwater archeologist is in charge of planning, conducting and supervising the field operations, laboratory analysis, and report preparation;

(c) A conservation laboratory is in place prior to commencement of field operations and a professional nautical conservator is in charge of planning, conducting and supervising the conservation of any artifacts and other materials recovered from the site;

(d) Field operations, laboratory analyses, and conservation treatments use appropriate scientific methods and techniques and are as non-destructive and non-disturbing as possible to the site, the surrounding environment, and any artifacts and other materials recovered from the site;

(e) The shipwreck site is fully documented (i.e., an archeological site map is prepared, measured drawings are made of significant features, and a photographic record is made of the wrecked vessel, significant features, and artifacts);

(f) A professional final report is prepared (and approved by the State) that describes the field operations, excavation methods, laboratory analyses, conservation treatments,

scientific findings, and recommendations for any future work;

(g) Copies of all field notes, site maps, measured drawings, photographs, videos, final reports, and other data and records derived from the recovery and analysis are deposited, stored and maintained in the repository named in the permit, license or contract;

(h) Copies of final reports, site maps and other appropriate records are provided to the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office);

(i) When the State is maintaining ownership to any artifacts or other materials recovered from the site, those items are deposited, stored and maintained in the repository named in the permit, license or contract;

(j) When the State is transferring ownership to any artifacts or other materials recovered from the site to a commercial salvor or treasure hunter:

(1) The transfer is made only after field operations and laboratory analysis are completed, the recovered items are conserved, and the final report is approved by the State; and

(2) To the extent possible, the items transferred are preserved and maintained as an intact collection and are made available for future study, public interpretation and exhibition;

(k) When a commercial salvor or treasure hunter is undertaking the recovery, the salvor or treasure hunter posts a performance bond to cover costs associated with the recovery (this is to ensure that sufficient funds would be available to the State if the salvor or treasure hunter is unable to complete the recovery according to the terms and conditions of the permit, license or contract); and

(l) Information on the recovery activity and the archeological findings are disseminated to the scientific community and to the public.

**Guideline 5: Allow public and private recovery activities at non-historic shipwrecks without archeological conditions.** When it is determined to be in the public interest to authorize the recovery of artifacts and other materials from State-owned non-historic shipwrecks, the recovery activity should not be conditioned with archeological requirements.

**Guideline 6: As appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to parties.** Artifacts and other materials recovered from State-owned shipwrecks are State property and would be subject to State



statutes and regulations governing the management and disposition of State property. Items recovered from shipwrecks designated as State historic sites also would be subject to State statutes and regulations governing the management of historic sites. When it is determined to be in the public interest to authorize private parties (like sport divers or commercial salvors) to recover and keep artifacts or other materials from State-owned shipwrecks, title to those items should be transferred in accordance with the applicable State property and historic site statutes and regulations. In general, the States should:

(a) Not transfer title to any items to another party until the authorized recovery activity is completed, the items are properly conserved and analyzed, and any required final report is completed and approved by the State;

(b1) Determine any archeological and commercial values of recovered artifacts and other materials;

(c) Determine what would constitute fair compensation to the private party (for his or her recovery efforts) in terms of a share of items recovered, a percentage (in cash) of the fair market value of the items, or a combination thereof; and

(d) Retain title to items that are unique, exceptionally valuable historically or representative of the items recovered, or are recovered illegally after enactment of the State's shipwreck management statute.

**Guideline 7: Disseminate information on public and private sector recovery activities to the public and to the scientific community.** Information on public and private sector recovery activities and any archeological findings should be disseminated to the public and the scientific community. Appropriate methods to disseminate information to the public would include, but not be limited to, publishing non-technical pamphlets, books, and articles in popular national, regional and specialty magazines; presenting lectures, video tapes and slide shows at local historical society and dive club meetings; developing underwater trails at shipwreck sites; and exhibiting artifacts and other materials in local museums. Appropriate methods to disseminate information to the scientific community would include, but not be limited to, preparing a final report (this always should be done), publishing articles in scientific journals, and presenting papers at professional meetings. Copies of final reports always should be provided to the State's historic preservation office, underwater archeology office (for archeology office,

in the absence of an underwater archeology office), and appropriate Federal historic preservation offices so that the data may be incorporated into Federal and State historic preservation plans.

**Guideline 8: Discourage the recovery and display of intact shipwrecks.** The costs to properly raise, conserve, maintain, and exhibit intact shipwrecks are prohibitively expensive and perpetual. Thus, recovering intact shipwrecks should be discouraged unless they are historic and in danger of imminent and unavoidable destruction, and it is determined to be in the best interests of the public. However, no such shipwreck should be recovered unless sufficient public and/or private funds are made available to document and recover it archeologically and to properly conserve, maintain, exhibit, and interpret it for the public.

#### **G. Providing Public Access to Shipwrecks**

Section 4(a) of the Act says that the U.S. Congress intends for the States to provide reasonable access by the public to State-owned shipwrecks and to guarantee recreational exploration of shipwreck sites. Access to publicly-owned shipwrecks (whether federally-owned or State-owned) by the public is beneficial for tourism, public enjoyment and appreciation, and preservation, as well as for recreation. However, increased public access also may cause inadvertent damage to shipwrecks.

The following guidelines are offered to assist the States and Federal agencies in determining what constitutes reasonable public access to shipwrecks under their ownership or control while, at the same time, protecting shipwrecks from inadvertent damage.

**Guideline 1: Guarantee recreational exploration of publicly-owned shipwreck sites.** At a minimum, any person should be able to freely and without a license or permit dive on, inspect, study, explore, photograph, measure, record, fish at, or otherwise use and enjoy publicly-owned shipwrecks (including historic shipwrecks and shipwrecks whose historical significance has not yet been evaluated) when the use or activity does not involve disturbing or removing parts or portions of the shipwreck or its immediate environment.

**Guideline 2: Establish lists of shipwrecks having recreational value.** Lists of publicly-owned shipwrecks having recreational value should be prepared in cooperation with sport divers, dive clubs, dive boat operators, recreational fishermen, recreational planners, underwater archeologists, and

maritime historians. The lists should note the shipwreck's location (including a chart description and coordinates), depth and general bottom conditions, a general description (including any dangers and the shipwreck's condition and historical significance), and indicate whether a license or permit is needed to collect artifacts or other materials.

**Guideline 3: Facilitate public access to shipwrecks.** Sport diver access to publicly-owned shipwrecks having recreational value should be facilitated through the placement of marker buoys and anchor moorings and through the distribution of information at dive shops and marinas. Underwater parks or preserves should be created in areas containing shipwrecks that are well preserved and valuable for recreational purposes. Public facilities on and off the shore to support diver access and visitor enjoyment and appreciation should be provided, as appropriate, in underwater parks and preserves.

**Guideline 4: Consult with interest groups prior to imposing any restrictions on access.** Prior to imposing any restrictions on public access to shipwrecks, comments should be sought from the various interest groups, the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office), and appropriate State and Federal agencies about the values and uses of individual shipwrecks (or classes of shipwrecks) and the need to regulate access. When shipwrecks entitled to U.S. sovereignty are involved, the applicable U.S. Government agency should be contacted for instructions on regulating public access to the federally-owned shipwrecks. When other shipwrecks entitled to sovereign immunity are involved, the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State should be contacted to secure instructions from the applicable flag nation on regulating public access to the foreign-owned shipwrecks.

**Guideline 5: Regulate access at few, if any, shipwrecks.** Decisions to limit, monitor or prohibit public access to shipwrecks should be made on a case by case basis, be practical, and be fairly administered. In general, public access to shipwrecks in State waters should be regulated only when:

(a) A shipwreck site presents an unacceptable risk to human safety and the visitor does not assume full responsibility for his or her safety;

(b) A shipwreck is extremely fragile and in danger of collapsing;



(c) A shipwreck is suffering extensive deterioration or attrition due to prior unregulated access;

(d) A permittee, licensee or contractor who is recovering a shipwreck under a valid permit, license or contract requests that access be regulated during the term of the permit, license or contract; or

(e) A shipwreck is entitled to sovereign immunity and the applicable Federal Government agency (for U.S. flag vessels) or foreign nation (for foreign flag vessels) provides instructions on regulating public access to the shipwreck. In the absence of specific instruction from the applicable sovereign, under customary international law, access by any U.S. national to shipwrecks entitled to sovereign immunity is prohibited. When a sovereign grants permission, it generally limits access to named individual for specified purposes. As a matter of policy, permission generally is not given to access (or salvage) sunken warships that contain the remains of deceased service personnel or explosive material.

**Guideline 6: Provide adequate public notice of restrictions.** Once a decision has been made to limit, monitor or prohibit access to a particular shipwreck, the public should be provided adequate notice of the restrictions. Appropriate methods to give public notice would include, but not be limited to, marking restrictions on nautical charts; posting notices on the shipwreck and at marinas and dive shops; notifying dive boat operators; and publishing restrictions in "Notice to Mariners," diver publications and local newspapers. A standard method of giving public notice should be adopted.

#### H. Interpreting Shipwreck Sites

Section 4(b) of the Act says that funds available to the States from HPF grants shall be available for a variety of activities, including interpretation of historic shipwrecks and properties. Whether using HPF grants, other monies, or working in partnership with the various interest groups, providing for the interpretation of publicly-owned shipwrecks helps increase the public's knowledge and understanding of our nation's maritime history and appreciation for shipwrecks and their preservation. Interpreting sites also is the only means to impart to the public the historic information and archeological discoveries that result from public and private sector shipwreck projects.

The following guidelines are offered to assist the States and Federal agencies in providing for the interpretation of

shipwrecks under their ownership or control.

**Guideline 1: Present information on the vessel's history and the shipwreck's various values and uses.** Interpretive efforts should strive to present to the public information about a vessel's construction, type, characteristics, age, use history, significance in history (such as participation in historical events or associations with significant individuals—like a designer, a builder or a commanding officer), and whether it is unique or representative of a vessel type. In addition, information on a shipwreck's various current and potential future values and uses should be presented.

**Guideline 2: Disseminate information on shipwreck projects through publications, lectures, exhibits, and professional papers.** The results of shipwreck projects should be presented in professional reports and journals as well as in non-technical, popular publications (such as diver and non-diver magazine articles, adult and children's books, booklets, and pamphlets). Lectures, videos, slide shows, and exhibits on shipwreck projects, maritime history, underwater archeology, and opportunities for sport divers to participate in projects should be made available to dive clubs, dive shops, boat and dive shows, marinas, historical societies, elementary and secondary schools, community colleges, maritime museums, libraries, and other appropriate outlets. Papers on the results of shipwreck projects should be given at professional archeological, historical, and maritime conferences.

**Guideline 3: Build models of vessels.** Models of intact shipwrecks should be made and exhibited to provide detailed, small-scale orientation and interpretation for divers and non-divers. Models would be particularly useful when diving is prohibited (such as at the U.S.S. *Arizona* in Hawaii), is difficult (such as the *Isabella*—in dark water with a fast current—near Astoria, Oregon), or when sufficient public interest in the shipwreck exists (such as at the U.S.S. *Monitor* offshore of North Carolina). The process of building models also can be a popular and successful interpretive activity.

**Guidelines 4: Include interpretive materials in underwater parks and preserves.** The creation of underwater trails at shipwreck sites in underwater parks or preserves can be used to effectively interpret sites for divers. Sites and noteworthy features should be marked with permanent signs. Signs also should be placed on mooring buoys along trails. In addition, a site map and pamphlet (enclosed in mylar and small

enough to fit into a buoyancy compensator pocket) should be prepared for individual shipwreck sites. Pamphlets, booklets, books, and exhibits should be prepared for divers and non-divers of all ages.

**Guideline 5: Encourage public and private interest groups to disseminate information on shipwreck activities.** Public and private museums (particularly maritime museums) and visitor centers should be encouraged to provide lectures, slide shows, videos, and exhibits on shipwrecks, maritime history, underwater archeology, underwater photography, diving, and the marine environment surrounding shipwreck sites. When a State's shipwreck management program permits sport divers and others to collect and keep artifacts or other materials from State-owned shipwrecks, those persons should be encouraged to make items legally recovered available for museum exhibits.

**Guideline 6: Require permittees, licensees, and contractors to disseminate information about recovery activities at historic shipwrecks.** When a permit, license or contract is issued for the scientific excavation, commercial salvage or treasure hunting of an historic shipwreck, the permittee, licensee or contractor should be required, as a condition to the issuance of the permit, license or contract, to:

- Make presentations on the results of the recovery activity and the archeological findings at professional meetings and in public forums;
- Prepare scientific and non-technical, popular publications; and
- To the extent possible, make artifacts and other materials recovered from the shipwreck available for future study, public interpretation and exhibition.

#### I. Establishing Volunteer Programs

Using sport diver and non-diver volunteers in shipwreck management activities can be an effective, efficient, and economical means to discover, document, study, recover, and protect publicly-owned shipwrecks. Establishing organized volunteer programs that include sport divers and other interested parties in shipwreck management activities also can enhance and nurture existing partnerships among sport divers, underwater archeologists, maritime historians, States, and Federal agencies.

The following guidelines are offered to assist the States and Federal agencies in establishing volunteer programs.

**Guideline 1: Use volunteers in shipwreck projects.** Dive clubs, dive



shops, dive boat operators, and individual sport divers frequently are willing to volunteer their diving skills or donate the use of their vessels or equipment to help State and Federal agencies locate, identify, evaluate, map, photograph, excavate, and protect shipwrecks. Non-divers who have an interest in maritime history and shipwrecks also often are willing to volunteer their skills to help State and Federal agencies conduct archival research and conserve artifacts and other materials recovered from shipwrecks. States and Federal agencies should use such volunteers in carrying out shipwreck projects.

**Guideline 2: Maintain lists of volunteers.** Lists of persons (diver and non-diver), dive clubs, and other associations and organizations that have indicated an interest in volunteering their services and equipment in shipwreck survey, mapping, and research projects should be assembled and maintained. The lists should indicate areas of interest (such as archival research, mapping or photography) and skill, noting whether those persons who are sport divers are certified in SCUBA, have any previous shipwreck project experience, or have completed any standardized diver specialty certification courses (such as advanced SCUBA, wreck diving, research diving, search and recovery, underwater photography, and basic underwater archeological methods). When evaluating a volunteer's skills, avocational experience and training courses completed out-of-State should be recognized.

**Guideline 3: Distribute information on shipwreck projects to interested parties.** Information on proposed shipwreck projects routinely should be distributed to sport divers, dive clubs, dive shops, dive boat operators, maritime historical societies, and other businesses, organizations and persons who may be interested in volunteering their services or donating the use of their vessels or equipment for shipwreck projects. Interested parties should be encouraged to participate.

**Guideline 4: Ensure that volunteers are properly trained and supervised.** At a minimum, sport divers who volunteer to work on shipwreck projects should be certified in SCUBA. Sport diver volunteers should be encouraged to complete standardized diver specialty certification courses (like the ones listed above in Guideline 2). However, completing such course work should not be necessary to participate in shipwreck projects. Diver and non-diver volunteers should be properly supervised by

qualified professionals appropriate to the nature of the work being (performed (e.g., underwater archeologists should supervise volunteers who are participating in mapping and excavation projects; nautical conservators should supervise volunteers who are assisting in the conservation of recovered artifacts).

**Guideline 5: Cooperate with the private sector in designing and teaching archeological methods specialty courses for sport divers.** Underwater archeologists, maritime historians, and education professionals should cooperate with professional diving organizations (such as the Professional Association of Diving Instructors and the National Association of Underwater Instructors) and other educational and scientific organizations in designing and teaching standardized diver specialty certificate courses in underwater archeological methods. Such courses should provide basic training in how to research, locate, record, and report shipwrecks. Introductory courses should provide background in archival research, survey methods, site mapping, illustration, photography, diagnostic measurement skills, and standard vessel architecture. In addition, they should teach divers non-destructive, preservation oriented behavior and describe responsibilities under State and Federal laws and international law principles and treaties. Advanced courses should provide training in excavation techniques, artifact identification and conservation, and preparation of nominations of historically significant shipwrecks to the National Register of Historic Places.

**Guideline 6: Rely on private sector SCUBA and diver specialty training programs.** In lieu of developing government operated SCUBA and diver specialty training programs, professional diving, educational and scientific organizations that teach and certify divers in SCUBA, wreck diving, research diving, underwater photography, and basic underwater archeological methods should be relied upon to train sport divers in such techniques. Where such courses currently are not available, those organizations should be encouraged to provide certified instructors to offer such courses. Organizations also should be encouraged to produce manuals, for use by sport divers, that contain information from the specialty courses.

**Guideline 7: Recognize private sector contributions to shipwreck discovery, research and preservation.** Dive clubs, local historical and maritime societies, sport divers, and other organizations

and persons who find and report the discovery of previously unknown shipwrecks, who volunteer their skills, or who donate the use of their vessels, supplies or equipment in shipwreck projects should be recognized for their contributions to shipwreck discovery, research and preservation. Forms of recognition should include, but not be limited to:

(a) Naming shipwreck sites after the person who discovers it;

(b) Issuing certificates or plaques to organizations and persons who find and report the discovery of previously unknown shipwreck sites; who volunteer their skills on shipwreck projects; or who donate the use of their vessels, supplies or equipment on shipwreck projects;

(c) Naming discoverers, volunteers and donors in museum exhibits, newspaper and magazine coverage, and publications; and

(d) When a State's shipwreck management program provides for the release of artifacts and other materials removed from State-owned shipwrecks, giving appropriate artifacts or materials to discoverers, volunteers and donors.

#### *J. Creating and Operating Underwater Parks or Preserves*

Section 4(b) of the Act encourages the States to create underwater parks or areas to provide additional protection for shipwreck sites. The creation of underwater parks or preserves provides many other positive benefits as well, such as increasing the public's awareness of and appreciation for the nation's maritime heritage, providing additional recreational opportunities for sport divers and fishermen, generating tourism revenues, and providing additional protection for natural resources and habitat areas located within the boundaries of the park or area. In addition, underwater parks or preserves could be linked with existing maritime museums, floating historic vessels, lighthouses, and lifesaving stations to provide the public with a broader interpretation of the nation's maritime history.

The following guidelines are offered to assist the States in creating and operating underwater parks or preserves.

**Guideline 1: Consult with the various interest groups.** Public meetings should be held prior to the creation of any underwater park or preserve. Suggestions for creating and operating underwater parks or preserves should be sought from local and regional interest groups, businesses and government agencies (e.g., sport divers,



dive clubs, dive boat operators, dive shops, recreational fishermen, underwater archeologists, marine biologists, chambers of commerce, recreation and tourism organizations, and applicable State and Federal agencies). Once an underwater park or preserve is created, an association or board of local citizens who represent the various interest groups should be established and consulted periodically on the operation of the park or preserve.

**Guideline 2: Prepare an environmental and economic impact assessment.** Prior to creating an underwater park or preserve, an assessment of the environmental and economic impacts that would result should be prepared. Assessments should include descriptions of known historic and non-historic shipwrecks, other cultural resources, natural resources, and habitat areas located within the proposed boundaries of the park or preserve; current uses and potential impacts to the shipwrecks, other resources and areas; potential recreational, educational, preservation and tourism benefits; potential impacts to businesses (such as commercial fishing); and budget estimates of costs for initial development and subsequent annual operation of the proposed park or preserve. Draft assessments should be made available to the State's shipwreck advisory board, if one exists, and the various interest groups for public review and comment.

**Guideline 3: Specify the unit's purpose, significance, boundaries, and any special conditions and constraints.** Legislation or regulations that authorize the creation of an underwater park or preserve should establish the unit's purpose and significance, specify its boundaries, and identify any special conditions and constraints. When the unit is to be managed by a Federal agency on behalf of a State, the enabling legislation or written management agreement should specify how the unit, its resources and habitat areas are to be managed (see Guideline No. 7 in subpart B, Part II, of these "Guidelines" for a discussion on the Federal management of State-owned resources).

**Guideline 4: Develop a general management plan.** A general management plan should be prepared to guide future planning and actions for each underwater park or preserve. A general management plan should discuss the unit's legislated purpose and significance; identify major issues affecting management and use of the unit and its resources; and identify management objectives, planning needs, and priorities.

**Guideline 5: Develop a resource management plan.** A resource management plan should be prepared for each underwater park or preserve. A resource management plan should discuss the significance and condition of known natural and cultural resources; assess the potential presence of as yet unknown resources; identify survey, identification, documentation, evaluation, interpretation, protection, and long-term preservation needs, priorities, and cost estimates; and discuss impacts to the natural and cultural resources from natural causes, visitor use, park development, and other activities. The plan should be revised periodically to reflect scientific data collected during archival research, field surveys and preservation treatments; changing environmental conditions; effects from visitor use and development; and changing park priorities. The resource management plan should be the basis upon which multiyear programming and action schedules are prepared for each underwater park or preserve.

**Guideline 6: Interpret and facilitate public access to shipwreck sites in underwater parks and preserves.** Shipwreck sites in parks and preserves should be marked with buoys and appear on nautical charts to encourage and promote non-disturbing recreational exploration. Known hazards should be reduced or removed. Information about dangers should be posted in prominent places and included in park brochures. Recognizing that shipwreck sites are of interest to non-divers as well as divers, interpretive materials should be developed for both interest groups. For example, permanent signs could be placed in and around the shipwreck as part of an underwater trail. In addition, pamphlets and other publications describing the unit's shipwrecks and the area's maritime history could be made available. Dock side exhibit areas and a maritime museum could be established in the unit or interpretive materials could be made available to the local community's museum or historical society. Video tapes of shipwreck sites also could be shown in an exhibit area or museum and made available for purchase.

**Guideline 7: Protect shipwreck sites located within underwater parks and preserves.** Moorings should be placed at shipwreck sites located within parks and preserves to protect the sites and surrounding natural resources and habitat areas from inadvertent anchor damage. Alternatively, dive boats should be required to anchor off the site. In addition, activities that would

damage or destroy shipwreck sites located within parks and preserves should be prohibited or restricted so that the multiple values and uses of the sites are maintained. For example, souvenir collecting, commercial salvage, and treasure hunting at shipwrecks (whether historic or non-historic) should be prohibited in underwater parks and preserves. In addition, dredging and trawling activities should be limited to those areas of the park or preserve that do not contain shipwreck sites, natural resources and habitat areas. Also, archeological research should be regulated through a permit system.

### Part III. Abandoned Shipwreck Act

On April 28, 1988, the Abandoned Shipwreck Act (Pub. L. 100-298; 102 Stat. 432; 43 U.S.C. 2101-2106) was signed into law by the President of the United States. The Act is reprinted, below, in its entirety.

#### An Act

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### Section 1. Short Title

This Act may be cited as the "Abandoned Shipwreck Act of 1987."

#### Section 2. Findings

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) Included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

#### Section 3. Definitions

For Purposes of this Act—

(a) The term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) The term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) The terms "public lands," "Indian lands," and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

(d) The term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and



(f) The term "submerged lands" means the lands—

(1) That are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) Of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) Of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) Of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

#### Section 4. Rights of Access

(a) Access Rights. In order to—

(1) Clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) Provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act, it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) Protect natural resources and habitat areas;

(B) Guarantee recreational exploration of shipwreck sites; and

(C) Allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) Parks and Protected Areas. In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

#### Section 5. Preparation of Guidelines

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the *Federal Register* which shall seek to:

(1) Maximize the enhancement of cultural resources;

(2) Foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) Facilitate access and utilization by recreational interests;

(4) Recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and

private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

#### Section 6. Rights of Ownership

(a) United States Title. The United States asserts title to any abandoned shipwreck that is—

(1) Embedded in submerged lands of a State;

(2) Embedded in coralline formations protected by a State on submerged lands of a State; or

(3) On submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) Transfer of Title to States. The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) Exception. Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) Reservation of Rights. This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) Section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) Section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

#### Section 7. Relation to Other Laws

(a) Law of Salvage and the Law of Finds. The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) Laws of the United States. This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) Effective Date. This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

Approved April 28, 1988

#### Part IV. Shipwrecks in the National Register of Historic Places

As of December 4, 1990, there were 142 shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places.

Where known, the popular name; vessel name, if different from the popular name; type of vessel; date of construction; wreck date and location; owner; manager, if different from the owner; and level of historical significance of these shipwrecks are listed below. As required by section 6(b) of the Act, the public is hereby given notice that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks listed below and transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public and Indian lands. The U.S. Government retains its title to shipwrecks in or on the public lands of the United States while Indian tribes hold title to those in or on Indian lands.

#### Alaska

*Lieut. C.V. Donaldson.* The hulk of this wooden hulled steamer lies on the shoreline at Belmont Point near Nome. Built in 1907, she was laid up in 1955. Privately owned. Listed in the National Register as nationally significant.

#### Alabama

*U.S.S. Tecumseh.* This iron hulled Union monitor, built in 1863 and sunk in 1864, is entitled to sovereign immunity. The intact wreck is buried in 29 feet of water in Mobile Bay near Mobile. Owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

#### Arizona

*Charles H. Spencer.* This wooden hulled stern-wheel steamer, built in 1911, lies in 20 feet of water near the shoreline of the Colorado River near Lees Ferry, within Glen Canyon National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as regionally significant.

#### California

*City of Rio de Janeiro.* This iron hulled steamer, built in 1878, was wrecked in 1901 off Point Diablo near San Francisco. The intact wreck lies in 320 feet of water just off the Golden Gate. Owned by the State of California, State Lands Commission. Listed in the National Register as nationally significant.

*King Philip.* The remains of this wooden hulled clipper, built in 1856, is buried on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service.



Listed in the National Register as nationally significant.

**King Street Ship.** This wooden hulled whaler named *Lydia*, built in 1840, was laid by in 1907. Remains of this shipwreck are buried at the foot of King Street in San Francisco. Owned by the city and county of San Francisco. Listed in the National Register as nationally significant.

**Reporter.** The scattered remains of this wooden hulled schooner, built in 1876, are intermingled with the remains of *King Philip* and are buried in 5 feet of water on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Stamboul.** The remains of this wooden hulled whaler, built in 1843, are buried in 6 feet of water at the foot of 12th Street in Benicia, within Matthew Turner Shipyard Park. Owned by the city of Benicia. Listed in the National Register as nationally significant.

**Tennessee.** The scattered remains of this wooden hulled side-wheel steamer, built in 1848 and wrecked in 1853, are buried in 10 feet of water in the Tennessee Cove near Marin City, within Golden Gate National Recreation Area. Owned jointly by the U.S. Government, National Park Service, and the State of California, State Lands Commission. Listed in the National Register as nationally significant.

**William Gray.** This wooden hulled packet ship, built in 1827, was sunk in 1852 for use as a wharf. The hulk is buried beneath Battery and Greenwich Streets in San Francisco. Privately owned. Listed in the National Register as nationally significant.

**Winfield Scott.** The scattered remains of this wooden hulled side-wheel steamer, built in 1850 and wrecked off Anacapa Island, are buried in 25 feet of water in Channel Islands National Park and National Marine Sanctuary. Owned by the State of California, State Lands Commission. Managed jointly by the U.S. Government, National Park Service and National Oceanic and Atmospheric Administration. Listed in the National Register as nationally significant.

#### Connecticut

**Berkshire No. 7.** The intact remains of this steel and wooden canal barge, built in 1935, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

**Elmer S. Dailey.** The intact remains of this wooden Erie Canal barge, built in 1915, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the

National Register as nationally significant.

**Priscilla Dailey.** The intact remains of this wooden Champlain Canal barge, built in 1929, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

#### Delaware

**State of Pennsylvania.** This steel hulled passenger steamship was built in 1923. Her intact hulk lies in 5 feet of water on the shore of the Christina River near Wilmington. Privately owned. Listed in the National Register as locally significant.

#### Florida

**Barge Site.** Remains of this wooden barge are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

**Boiler Site.** This wooden vessel, named *St. Lucie*, was built in 1888 and wrecked in 1906. Remains of this shipwreck are scattered on the bottomlands of Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

**Hubbard.** Scattered remains of this wooden Colonial merchant vessel, wrecked in 1772, lie in 20 feet of water in Elliot Key in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

**Jordan's Ballast Showing Site.** Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

**Keel Showing Site.** Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

**Legare Anchorage Shipwreck.** This wooden British merchant vessel, named *H.M.S. Fowey*, wrecked in 1748. Her scattered remains are buried in Biscayne National Park. Owned by the

U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

**Pillar Dollar Wreck.** Scattered remains of this wooden vessel are buried in 20 feet of water in Biscayne National Park near Homestead. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

#### Georgia

**C.S.S. Chattahoochee.** The scattered remains of this Confederate States Navy wooden gunboat, built and sunk in 1863, are buried in 15 feet of water in an area encompassed by the Confederate Navy Museum in Columbus; the excavated stern is deposited in the museum. This wreck is entitled to sovereign immunity. Owned jointly by the U.S. Government, General Services Administration (which owns the unexcavated remains), and the city of Columbus (which owns the excavated stern). Managed by the city of Columbus. Listed in the National Register as nationally significant.

**C.S.S. Georgia.** The scattered remains of this Confederate States Navy ironclad battery are buried in 28 feet of water in the Savannah River near Savannah. Built in 1862 and sunk in 1864, this wreck is entitled to sovereign immunity. Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, Army Corps of Engineers. Listed in the National Register as nationally significant.

**C.S.S. Jackson.** This Confederate States Navy ironclad gunboat (ex-*Muscogee*), built in 1863 and sunk in 1865, has been completely excavated; the excavated remains are deposited in the Confederate Naval Museum in Columbus. Owned by the city of Columbus. Listed in the National Register as nationally significant.

#### Guam

**Aratama Maru.** The scattered remains of this steel hulled freighter lie in 50 feet of water in Talofofo Bay. Built in 1938, this vessel was being used by the Japanese Navy as a transport when it sank in 1944, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

**S.M.S. Cormoran.** This intact steel hulled steamer (ex-*Rajasan*) lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1909, this ship was being used as a German commerce raider when it was scuttled by its crew in 1917



to avoid capture, giving it sovereign immunity. Owned by the German Government. Listed in the National Register as regionally significant.

**Tokai Maru.** This intact steel hulled passenger and cargo ship lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1930, this ship was being used by the Japanese Navy when it sank in 1943, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

#### Hawaii

**U.S.S. Arizona.** This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel lies in the U.S.S. Arizona Memorial in 38 feet of water. Owned by the U.S. Government, Department of the Navy. Managed by the U.S. Government, National Park Service. Listed in the National Register as a National Historic Landmark.

**U.S.S. Utah.** This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel is in 25 to 50 feet of water near Honolulu. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as a National Historic Landmark.

#### Indiana

**Muskegon.** The remains of this wooden hulled side-wheel steamer (ex-*Peerless*) lie in 30 feet of water in Lake Michigan near Michigan City. She was built in 1872 and wrecked in 1911. Owned by the State of Indiana. Listed in the National Register as regional significant.

#### Maine

**Cora F. Cressy.** The intact hulk of this wooden hulled schooner lies on the shoreline of Keene Narrows near Bremen. Built in 1902, she was sunk as a breakwater. Privately owned. Listed in the National Register as nationally significant.

**Defence.** The remains of this wooden hulled Revolutionary War period brigantine lie buried in 23 feet of water in Stockton Springs Harbor. Built in 1778 and sunk in 1779 while privateering, this wreck is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

**Hesper.** At high tide, the intact hulk of this wooden hulled schooner lies in 8 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1918 and laid up in 1936. Privately owned. Listed in the National Register

as part of an archeological district, this wreck is nationally significant.

**Luther Little.** The intact hulk of this wooden hulled freight schooner lies in 8 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1917 and laid up in 1936. Privately owned. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

#### Michigan

**Algoma.** The scattered remains of this steel hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1883 and wrecked in 1885. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**America.** This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1898 and wrecked in 1928. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Chester A. Congdon.** This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. The vessel (ex-*Salt Lake City*) was built in 1907 and wrecked in 1918. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Cumberland.** The scattered remains of this wooden hulled side-wheel freighter lie in 20 to 150 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1871 and wrecked in 1877. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Emperor.** This intact, steel hulled freighter lies in 50 to 170 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1910 and wrecked in 1947. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**George M. Cox.** The scattered remains of this steel hulled freighter (ex-*Puritan*) lie in 90 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1901 and wrecked in 1933. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Glenlyon.** The scattered remains of this steel hulled freighter (ex-*William H. Gratwick*) lie in 60 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in

1893 and wrecked in 1924. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Henry Chisholm.** The scattered remains of this wooden hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. Built in 1880 and wrecked in 1898. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Indiana.** This intact, wooden hulled freighter lies in 125 feet of water near Paradise in Lake Superior, within Thunder Bay Bottomland Preserve. She was built in 1848 and wrecked in 1858. Owned by the State of Michigan, Department of Natural Resources. Determined eligible for the National Register as nationally significant.

**Kamloops.** This intact, steel hulled freighter lies in 180 to 260 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1924 and wrecked in 1927. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

**Monarch.** The scattered remains of this wooden hulled freighter lie in 20 to 70 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1890 and wrecked in 1906. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

#### Mississippi

**Star of the West.** This wooden hulled side-wheel steamer, built in 1852, was used by the Confederate States Navy. Renamed the C.S.S. *Philip*, the vessel was sunk in the Tallahatchie River near Greenwood in 1862 to create an obstacle to navigation against the Union. This shipwreck, which is entitled to sovereign immunity, is owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

#### North Carolina

**A.P. Hurt.** The intact remains of this iron hulled stern-wheel riverboat lie in 15 feet of water in the Cape Fear River near Wilmington. She was built in 1860 and wrecked in 1924. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

**Arabian.** The intact remains of this wooden hulled side-wheel steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1851, she



wrecked in 1863 while being used as a blockade runner. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Argonauta*. Built in 1876, this iron hulled tugboat is laid up on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Argonauta Barge*. The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #1*. The remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #2*. The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #3*. The intact remains of this wooden hopper barge are on the shore of the Cape Fear River near Wilmington, having been sunk to serve as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #4*. The scattered remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bendigo*. The remains of this iron hulled side-wheel blockade runner (ex-*Millie*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. She was built in 1863 and wrecked in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bulkhead Barge*. The remains of this wooden hulled barge lie submerged near the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bulkhead Tugboat*. The remains of this wooden hulled vessel are on the shore of the Cape Fear River near

Wilmington, serving as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Carolina Beach Inlet Recent*. The remains of this iron hulled side-wheel blockade runner are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Carolina Beach Inlet South Site*. The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Cherokee*. The remains of the wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Condor*. The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*C.S.S. Raleigh*. The scattered remains of this Confederate States Navy ironclad gunboat are buried in 20 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, General Services Administration. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Dolphin*. The intact remains of this wooden hulled tugboat, built in 1896, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Duoro*. The remains of this iron hulled blockade runner, sunk in 1863, are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Launch*. The remains of this wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of

North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Other Skiff*. The intact remains of this wooden hulled skiff are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Side-wheel Steamer*. The remains of this wooden hulled side-wheel steamer, named *Sylvan Grove*, are buried on the shore of Eagles Island in the Cape Fear River near Wilmington. She was built in 1858 and wrecked in 1891. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Skiff No. 1*. The remains of this wooden hulled skiff are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Elizabeth*. The scattered remains of this wooden hulled side-wheel steamer (ex-*Atlantic*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. Built in 1852, she sank in 1863 while blockade running. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Ella*. The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 15 feet of water at the mouth of the Cape Fear River near Bald Head Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*General Beauregard*. The remains of this iron hulled side-wheel blockade runner (ex-*Havelock*) are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Built in 1858 and sunk in 1863. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Government Barge*. The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*H.G. Wright*. The remains of this wooden hulled stern-wheel boat, built in



1882, are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Hebe.* The remains of this iron hulled blockade runner, built and sunk in 1863, are buried in 22 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Iron Rudder Wreck.* The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*John Knox.* The remains of this wooden riverboat, built in 1919, lie in 10 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Last One Wreck.* The remains of this wooden vessel lie in 2 feet of water near the shoreline of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Minnesota.* The hulk of this wooden tugboat, built in 1910, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Modern Greece.* The remains of this iron hulled blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. Built in 1859 and sunk in 1862. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Moorefield Site.* The remains of this iron hulled vessel are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Orange Street Wreck.* The remains of this steel hulled yacht are buried in 15 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Phantom.* The remains of this steel hulled blockade runner, built and sunk in 1863, are buried in 15 feet of water in Topsail Inlet near Topsail Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Ranger Site.* The remains of this iron hulled side-wheel blockade runner, named *Ranger*, are buried in Lockwood's Folly Inlet near Wilmington. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Rich Inlet Wreck.* The remains of this iron hulled side-wheel blockade runner, named *Wild Dayrell*, are buried in 10 feet of water in Rich Inlet near Figure 8 Island. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Sanded Barge.* The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Skinner's Dock Wreck.* The remains of this wooden vessel are buried in 25 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Spayed Wreck.* The scattered remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Steam Crane Barge #1.* The intact remains of this wooden crane barge lie on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #3.* The hulk of this wooden tugboat (ex-*Isabella*), built in 1905, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #4.* The remains of this wooden tugboat, built in 1915, are buried on the shore of the Cape River near Wilmington. Owned by the State of

North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #5.* The intact remains of this wooden tugboat (ex-*Sadie E. Culver*), built in 1896, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #6.* The intact remains of this wooden tugboat (ex-*Atlantic City*), built in 1890, are on the shore of the Cape Fear River near Wilmington. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stormy Petrel.* The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*The Little Barge.* The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Aster.* The remains of this wooden tugboat, sunk in 1864 while in use by the Union Navy as a gunboat, are buried in 20 feet of water off Fort Fisher at Kure Beach. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Iron Age.* The remains of this wooden side-wheel gunboat are buried in 12 feet of water in Lockwood's Folly Inlet near Wilmington. Built in 1862, she sank in 1864 while in use as a Union Navy gunboat. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Louisiana.* The remains of this iron hulled steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1860, she sank in 1864 while in use as a Union Navy powder vessel. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.



**U.S.S. Monitor.** The intact remains of this ironclad turret monitor lie in 230 feet of water on the outer continental shelf, in the U.S.S. Monitor National Marine Sanctuary. She was built in 1861 and sunk in 1862. Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, National Oceanic and Atmospheric Administration. Listed in the National Register as a National Historic Landmark.

**U.S.S. Peterhoff.** The remains of this iron hulled side-wheel steamer are buried in 30 feet of water off Fort Fisher at Kure Beach. She sank in 1864 while in use as a Union Navy gunboat, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

**Wright Barge.** The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

#### Nebraska

**Bertrand.** The remains of this wooden stern-wheel steamboat lie in 15 feet of water at De Soto Bend in the Missouri River, near Blair, in the De Soto Wildlife Refuge. She was built in 1864 and sunk in 1865. Owned by the U.S. Government, Fish and Wildlife Service.

#### New Jersey

**Alexander Hamilton.** The hulk of this steel hulled side-wheel steamer lies in 10 feet of water in New York Harbor near Earle. Built in 1924, she was laid up in 1977 in the Hudson River. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

**Archeological Site #1.** The remains of this wooden hulled vessel are buried in 5 feet of water in Barges Creek near Hamilton Township. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

**Bead Wreck.** The scattered remains of this wooden vessel are buried in 12 feet of water in the Mullica River near Chestnut Neck. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

#### New York

**Bessie M. Dustin.** The remains of this wooden schooner are on the shore of Shooter's Island in New York Harbor. Built in 1918, this vessel was laid up in 1936. Owned by the State of New York.

Determined eligible for the National Register as nationally significant.

**H.M.S. Culloden.** The intact remains of this wooden British man-of-war lie on the bottomlands of Fort Pond Bay. Built in 1776 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register, level of historical significance is undetermined.

**Hoffmans.** The hulk of this wooden covered barge, built in 1907, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Jacob A. Decker.** The hulk of this wooden barge, built in 1930, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Keating.** The hulk of this wooden barge, built in 1912, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Minerva.** The hulk of this wooden, side-wheel steamer (ex-Jane Moseley) lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Built in 1873, this vessel was laid up and dismantled in 1932. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 28.** The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 30.** The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 34.** The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 37.** The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 41.** The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 43.** The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 48.** The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 53.** The hulk of this wooden, side-wheel steamer lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 54.** The hulk of this wooden package freighter lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 59.** The hulk of this wooden schooner lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

**Vessel 84.** The hulk of this wooden sailing lighter lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

#### Oregon

**Isabella.** The remains of this wooden brig are buried in 40 feet of water off Cape Disappointment at the mouth of the Columbia River, near Astoria. Built in 1825, this vessel wrecked in 1830 while in use as a Hudson Bay Company supply ship. Owned by the State of Oregon, Division of State Lands. Listed in the National Register as part of an archeological district of national significance.

#### Rhode Island

**H.M.S. Orpheus.** The remains of this wooden British frigate are buried in Narragansett Bay near Middletown. Built in 1773 for the Royal Navy, this vessel was scuttled in 1778. This vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as nationally significant.

#### South Carolina

**Brown's Ferry Wreck.** The remains of this wooden sailing vessel are buried on the shore of the Black River near Georgetown. This vessel wrecked in 1740 while in use as a cargo vessel.



Owned by the State of South Carolina, Institute of Archaeology and Anthropology. Listed in the National Register as nationally significant.

#### Texas

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *San Esteban*, are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore. Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *Santa Maria de Yciar*, are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore. Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *Espiritu Santo*, are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore. Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*U.S.S. Hatteras.* The remains of this iron hulled, side-wheel schooner (ex-*St. Mary's*) are buried in 55 feet of water on the outer continental shelf off the coast of Galveston. Built in 1861, this vessel was in use by the Union Navy when it sank in 1863, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register, level of historical significance is undetermined.

#### Virginia

*Cornwallis Cave Wreck.* The remains of this wooden Royal Navy transport and supply vessel are buried in 12 feet of water in the York River near

Yorktown. This vessel, which was scuttled in 1781, is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

*C.S.S. Florida.* The remains of this wooden Confederate States Navy cruiser are buried in 63 feet of water in the James River near Newport News. Built in 1863, this vessel was in the possession of the Union Navy as a prize of war when she sank in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

*H.M.S. Charon.* The remains of this wooden Royal Navy fifth-rate warship lie in 15 feet of water in the York River off Gloucester Point. Built in 1778 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

*U.S.S. Cumberland.* The scattered remains of this wooden Union Navy frigate are buried in 40 feet of water in the James River off Pier C at Newport News. Built in 1842 and sunk in 1862, this vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

*Yorktown Fleet #1.* The remains of this wooden Royal Navy transport are buried in 15 feet of water in the York River off Gloucester Point. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #2.* The remains of this wooden Royal Navy transport are buried in 60 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #3.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British

Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #4.* The remains of this wooden Royal Navy transport are buried in 30 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #5.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #6.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Wreck.* The remains of this wooden merchant vessel, used as a Royal Navy transport and supply ship, lie in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

#### Virgin Islands

*H.M.S. Santa Monica.* The remains of this wooden Royal Navy frigate lie in 24 feet of water in Round Bay near Coral Bay. Wrecked in 1782 while on patrol, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as locally significant.

#### Washington

*La Merced.* The hulk of this wooden schooner lies on the shore of the Guemes Channel in Puget Sound near Anacortes. Built in 1917, this vessel was laid up to form a breakwater. Privately owned. Listed in the National Register as nationally significant.

[FR Doc. 90-20350 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-70-M



The American Medical Association is a national organization of physicians and surgeons, organized for the purpose of promoting the science and art of medicine, and of securing the highest quality of medical education and practice. It was organized in 1847, and has since that time been the leading organization of its kind in the United States. Its members are physicians and surgeons of all branches of medicine, and its objects are to advance the science and art of medicine, to secure the highest quality of medical education and practice, and to protect the public interest in the medical profession.

The Association is organized into a national body, and into state and local branches. The national body is composed of representatives of the state and local branches, and its officers are elected by the members. The state and local branches are organized in a similar manner, and their officers are elected by the members. The Association is a non-profit organization, and its funds are derived from the contributions of its members. It is a body of physicians and surgeons, organized for the purpose of promoting the science and art of medicine, and of securing the highest quality of medical education and practice.

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# Register

**Tuesday  
December 4, 1990**

## **Part IV**

## **Department of Labor**

**Employment Standards Administration,  
Wage and Hour Division  
Office of the Secretary**

### **29 CFR Parts 1 and 5**

**Procedures for Predetermination of Wage  
Rates; Labor Standards Provisions  
Applicable to Contracts Covering  
Federally Financed and Assisted  
Construction and to Certain  
Nonconstruction Contracts; Final Rule**



**DEPARTMENT OF LABOR****Employment Standards  
Administration, Wage and Hour  
Division****Office of the Secretary****29 CFR Parts 1 and 5****Procedures for Predetermination of  
Wage Rates; Labor Standards  
Provisions Applicable to Contracts  
Covering Federally Financed and  
Assisted Construction and to Certain  
Nonconstruction Contracts**

**AGENCY:** Wage and Hour Division,  
Employment Standards Administration,  
Labor.

**ACTION:** Establishment of effective date.

**SUMMARY:** This document provides the effective date for amended Regulations, 29 CFR parts 1 and 5, governing the use of semi-skilled "helpers" on federally-financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). This final rule was previously published in the *Federal Register* (54 FR 4234) on January 27, 1989. The implementation of an earlier version of this rule was enjoined by the U.S. District Court for the District of Columbia on July 22, 1982. Following promulgation of the revised final regulation, that injunction was vacated on September 24, 1990.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:**

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Administrator, Wage and Hour Division,  
Employment Standards Administration,  
U.S. Department of Labor, Room S-3502,  
200 Constitution Avenue, NW.,  
Washington, DC 20210. Telephone (202)  
523-8305. (This is not a toll-free  
number.)

**SUPPLEMENTARY INFORMATION****Background**

The Department of Labor (DOL) attempted to implement helper rules in May 1982. (See 47 FR 23644, 23658 (May 28, 1982); 47 FR 32070 (July 20, 1982).) Among other provisions, lower paid helpers would have been allowed on DBRA projects under a broad definition of duties and in a maximum ratio of two helpers for three journeymen whenever the helper classification was "identifiable" in an area. The rules were enjoined by the U.S. District Court for the District of Columbia in a lawsuit brought by the Building and Construction Trades Department, AFL-CIO, and a number of individual unions (*Building and Construction Trades Department, AFL-CIO, et al. v.*

*Donovan, et al.*, 543 F. Supp. 1282, 553 F. Supp. 352).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld DOL's authority to allow an expanded use of helpers and approved the regulatory definition of a helper's duties (*Building and Construction Trades Department, AFL-CIO, et al. v. Donovan, et al.*, 712 F.2d 611). However, that ruling required that the regulations be modified to require that DOL first find the use of a particular helper classification prevailing in an area (rather than identifiable) before it may be used. The court concluded that allowing a lower paid helper classification to be used on DBRA work when that classification was only "identifiable" would result in payment of less than prevailing wages for some work, which is prohibited by the DBRA. The court did not rule on the remaining helper provisions. *Certiorari* was denied by the Supreme Court (464 U.S. 1069).

The District Court subsequently issued an order which lifted the injunction on the definition of helper but continued the injunction against all the other helper provisions, and stated that DOL could "submit to this court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the court of appeals, they will be approved." (*Building and Construction Trades Department, AFL-CIO, et al. v. Donovan, et al.*, 102 CCH Labor Cases para. 34,648 (December 21, 1984)).

DOL reexamined the enjoined provisions to the extent required by the court rulings and on August 19, 1987, issued a new proposal with necessary revisions (52 FR 31366).

Comments were invited on several alternatives for determining if the use of a helper classification prevailed.

The Department published a final rule on January 27, 1989 (54 FR 4234), stating therein that once the injunction against implementation of some provisions was lifted, the Department would publish a notice providing for an effective date 60 days thereafter. The Department submitted the revised rules to the District Court in accordance with the court's decision of December 21, 1984. The court vacated the injunction on September 24, 1990. (*Building and Construction Trades Department, AFL-CIO, et al. v. Dole, et al.*, Civil Action No. 82-1631).

**Summary of Rule**

To determine whether a helper classification prevails, the Department has adopted a scheme patterned after the codified regulatory standards for determining the prevailing wage for a

given classification. Section 1.7(d) provides a decision that proceeds in two steps:

(1) If the prevailing journeylevel wage is set by the "majority rule" (29 CFR 1.2(a)(1); more than 50 percent of the journeymen are paid the same rate), then the practice followed by those contractors whose rates prevail for the journeymen is also deemed the prevailing practice for determining whether a helper classification prevails, or,

(2) If no majority journeylevel rate exists and the prevailing wage is set by the "weighted average rule" (29 CFR 1.2(a)(1); the average of the wages paid to the journeymen, weighted by the total journeymen in the classification), then the classification employed by contractors using helpers (journeymen plus apprentices, trainees and helpers) will be compared to the total number of workers in the classification employed by contractors not using helpers (journeymen plus apprentices and trainees); the practice covering the larger number of workers will decide whether a helper classification prevails.

The notice of proposed rulemaking made no changes to the helper definition at § 5.2(n)(4) promulgated in 1982. It was repeated in the preamble of the 1987 proposal for informational purposes only, and is implemented herein. The rule defines a helper as a semi-skilled worker who works under the direction of and assists a journeyman. Helpers are able to perform a broad range of duties under a journeyman's supervision; the duties vary according to area practice.

Section 5.5(a)(1)(ii)(A) sets forth special criteria under which helper classifications and wage rates can be "conformed" (i.e., added after the wage determination has been issued) if a particular wage determination does not contain a helper classification. This section provides, as did the rule promulgated in 1982, that helper rates can be conformed without regard to the longstanding requirement, applicable to all other conformance actions, that the work of a proposed classification to be conformed not be performed by another classification already listed in the wage determination. In addition, a provision was added as a result of the court of appeals decision to require that helper classifications may be conformed only where they prevail in the area covered by the wage determination.

The enjoined 1982 regulations contained a numerical limitation on the use of helpers: Two helpers for every three journeymen, or not more than 40 percent of the total number of helpers



and journeymen, in the contractors' work force on the job site. (A one-helper-to-five-journeymen ratio was originally proposed, but was raised to 2:3 in the final rule in response to public comments that 1:5 was too restrictive and would not reflect the actual number of helpers used in the industry.)

Helpers employed in excess of this ratio would be required to be paid the applicable journeyman (or laborer's where appropriate) wage rate for the work actually performed. To insure that this ratio does not disrupt existing established local practices in areas where DBRA wage determinations currently contained helper classifications without any limitation on the number permitted, DOL will consider requests for variances from the ratio limitation prior to bid opening on a contract, if supported by a showing that the DBRA wage determination for the type of construction in effect in the area before the effective date of the final helper regulations contained a helper classification, and that there was a practice in the area of utilizing such helpers in the classification on DBRA projects in excess of the two-to-three ratio.

The ratio and variance provisions were not open for additional comment in the 1987 proposed rulemaking and are implemented herein.

#### Paperwork Reduction Act

The information collection requirements contained in § 5.5(a)(1)(ii) of part 5 were previously approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB Control number 1215-0140.

#### Dates of Applicability

This regulation shall be effective February 4, 1991.

The revisions to § 1.7(d) of part 1 shall be applicable only as to wage determinations issued based on wage surveys completed on or after the effective date of this revised rule. A wage survey will be deemed to be completed as of the cut-off date established for submission of wage data.

The revisions to §§ 5.2 and 5.5 of part 5 shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after the effective date of this revised rule. None of the revisions herein shall be applicable to any contract entered into prior to such date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment

Standards Administration, U.S. Department of Labor.

#### List of Subjects

##### 29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

##### 29 CFR Part 5

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC on this 28th day of November, 1990.

Roderick A. DeArment,  
Acting Secretary of Labor.

William C. Brooks,  
Assistant Secretary for Employment Standards.

Samuel D. Walker,  
Acting Administrator, Wage and Hour Division.

Accordingly, an effective date of February 4, 1991 is established for 29 CFR parts 1 and 5, which were published in the Federal Register of January 27, 1989 (54 FR 4234).

For the convenience of the public, the rules are hereby republished as set forth below:

#### PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

2. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161.64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. Section 1.7 is amended by adding a new paragraph (d) to read as follows:

##### § 1.7 Scope of consideration.

(d) The use of *helpers*, *apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraphs (d)(1) and (d)(2) of this section.

(1) If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of the journeymen in the classification as defined in § 1.2(a)(1) of this part, then the practice followed by those

contractors whose rates are adopted as prevailing for the journeyman shall also be deemed the prevailing practice in determining whether to issue a helper classification. Any ambiguity with regard to such practice, will be resolved by following the rule in paragraph (d)(2) of this section with respect to those contractors.

(2) If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen, weighted by the total number of journeymen in the classification as defined in § 1.2(a)(1) of this part, then the total number of workers in the classification employed by contractors utilizing helpers (journeymen plus apprentices, trainees, and helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen plus apprentices and trainees as defined in § 5.2(n)(4) of this chapter), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

#### PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

##### Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

3. The authority citation for part 5 continues to read as follows:

Authority: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

4. Section 5.2 is amended by revising paragraph (n) introductory text and by adding paragraph (n)(4) to read as follows:

##### § 5.2 Definitions.

(n) The terms apprentice, trainee, and helper are defined as follows:

(4) A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and



supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

\* \* \*

5. Section 5.5 is amended by revising paragraph (a)(1)(ii)(A) and adding a new paragraph (a)(4)(iv), to read as follows:

**§ 5.5 Contract provisions and related matters.**

(a) \* \* \*

(1) \* \* \*

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the

contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

\* \* \*

(4) \* \* \*

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an

applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

\* \* \*

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